



Document No. 522652

Contract #281-2014

## **Standard Terms and Conditions**

These Standard Terms and Conditions ("Agreement") are entered into by **tw telecom holdings inc.**, a Delaware corporation, on behalf of itself and its wholly owned and state certified operating subsidiaries, (collectively "TWTC") and Lexington Fayette Urban Co Gov, a Kentucky Governmental Entity ("Customer") and are effective upon execution by both Parties. Customer and TWTC may be referred to individually as a "Party" or collectively as the "Parties". TWTC is responsible for the performance of its operating subsidiaries under this Agreement.

**1. Service Orders:** Customer may submit service orders to TWTC to purchase telecommunication and related services under this Agreement ("Service Orders"). The Service Orders describe the telecommunication and related services that are available for purchase ("Services"). Service Orders executed by the Parties together with this Agreement form the final written agreement between the Parties and can only be amended or modified in a written document executed by both Parties. Services are subject to availability. The "Service Term" means the committed service duration for a particular Service as set forth in the applicable Service Order, including renewal periods. Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew for successive Month to Month terms unless terminated by either Party upon written notice provided in accordance with Section 20 below at least thirty days prior to expiration of the then existing Service Term.

**2. Term of Standard Terms and Conditions:** The term of these Standard Terms and Conditions will commence upon signature by both Parties and will continue to govern Service Orders entered into by the Parties unless and until the Agreement is terminated in accordance with Sections 12 or 13 herein, or is otherwise superseded by a subsequent written agreement between the Parties.

**3. Cancellation, Modification or Expedition of Orders:** "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the TWTC Website ([www.twtelecom.com](http://www.twtelecom.com)) and are subject to modification by TWTC effective upon posting to the TWTC Website.

(a) **Cancellation.** Customer may cancel a Service Order if the request is received in writing by TWTC prior to the planned installation date, and TWTC shall have the right to assess a Cancellation Charge. If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in Section 14 below.

(b) **Modification.** Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the planned installation date.

(c) **Expedite.** Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) **Third Party Charges.** In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for third party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order.

### **4. TWTC Network, Access and Interconnection:**

(a) **Responsibilities.** TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer ("TWTC Network"). The TWTC Network will remain TWTC's personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect its technical integrity. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer unless otherwise agreed to in a

writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. Customer must provide TWTC with access to its premises to install and maintain Services and TWTC's Network. Customer must provide, at its expense, the following (collectively "Premise Requirements"): (i) appropriate space, power and environmental conditioning; and (ii) reasonable access rights and/or rights of way from third parties, as may be required for the installation and maintenance of the TWTC Network at and into Customer's premises. Customer must pay a Modification Charge if Customer does not provide the Premise Requirements prior to the scheduled installation date. In addition to the Modification Charge, TWTC may charge Customer for the reasonable time and materials incurred and documented by TWTC that are incurred because of Customer's failure to timely provide the Premise Requirements plus any third party charges assessed against TWTC. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week.

(c) Demarcation Point, Inside Wiring and Activation Support. TWTC shall be responsible for provisioning Service up to the Demarcation Point, and Customer is responsible for providing and maintaining any necessary wiring and facilities on Customer's side of the Demarcation Point. "Demarcation Point" means the TWTC-designated physical interface between TWTC's Network and Customer's equipment, which point shall be either (i) in the case of a Service terminating at a TWTC owned or controlled premise, TWTC's designated distribution panel or network interface device located within such TWTC premise or (ii) in the case of a Service terminating at a Customer's premise, the distribution panel or network interface device located at the common telecommunications ("telco") demarcation at the Customer's or end-user's premise (e.g., entry point for telco facilities, telco closet or common telco room). If requested by Customer, TWTC may install, coordinate or otherwise arrange for installing or obtaining from third parties, facilities on Customer's side of the Demarcation Point ("Inside Wiring") and/or assist Customer with activating and/or configuring equipment on Customer's side of the Demarcation Point ("Activation Support"). Customer agrees to pay Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com) for any Inside Wiring and Activation Support performed by TWTC personnel and agrees that TWTC may bill Customer for the third party charges TWTC incurs to provide Inside Wiring.

(d) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that it or TWTC does not own, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

#### **5. Installation and Maintenance:**

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will not occur and the Service Term will not commence until the Service is operating properly. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use the Service.

#### **(b) Maintenance:**

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in Section 5(b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

#### **6. Charges, Billing, Taxes and Payment:**

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Services if Customer has failed to timely pay for Services on two occasions during any six month period.

(c) TWTC will invoice Customer for applicable Taxes (as defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

**"Tax" or "Taxes"** mean any federal, state or local excise, gross receipts, gross margin, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to purchases by Customer from TWTC for consideration under this Agreement, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" will not include any tax on TWTC's net income or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) TWTC will invoice Customer for applicable Recovery Fees (as defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. "Recovery Fees" means a surcharge to recover certain fees imposed on TWTC by a regulatory assessing authority for such things as doing business in certain jurisdictions, paying for rights-of-way charges, and/or funding certain government sponsored or supervised programs.

(e) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill ("Due Date"). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

**7. Disputes:** If Customer disputes any charges, it must log the dispute by completing and submitting a dispute form via TWTC's dispute website located at: <https://billing.twtelecom.com/disputes/>, or by contacting TWTC's dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid.

## **8. Service Levels / Service Outage Credits:**

(a) Service Level Agreement ("SLA"). The SLAs provided by TWTC are set forth at <http://www.twtelecom.com/SLAs>. The SLAs identify the applicable performance metrics and Service Outage credit tables. If a specific SLA is not identified on the website for a particular Service, then credits for Service Outages exceeding thirty (30) minutes will be calculated on a pro rata basis, i.e. credits will be calculated by multiplying the duration of the Service Outage by the applicable MRC, divided by the monthly period. Credits issued during a calendar month will not exceed the MRC associated with the Service that experienced the Service Outage(s).

(b) Service Outage Definition. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a SLA; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC's Network.

(c) Reporting and Tracking of Service Outages. If there is a Service Outage, Customer must contact TWTC's Customer Network Reliability Center ("CNRC") at 800-829-0420 and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC's CNRC and ends when the Service is restored. Service Outages do not include outages and failures caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice within thirty days following the third Service Outage.

(f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in Sections 8(a) and 8(e) of this Agreement constitute Customer's sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by TWTC's Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is: (i) not due to TWTC's Network; or (ii) on Customer's side of the Demarcation Point, Customer must compensate TWTC for the service call at TWTC's then prevailing Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com).

## 9. Governmental Regulation - Changes:

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if TWTC discontinues the Service under this subsection.

**10. Indemnification:** Each Party ("Indemnitor") shall indemnify, defend and hold the other Party ("Indemnitee") harmless from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold TWTC harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Section 14 herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

**12. Termination by TWTC:**

(a) **Termination With Notice.** TWTC may suspend or terminate all Services associated with a delinquent account if Customer fails to cure by paying the outstanding balance in full within ten (10) days following written notice by TWTC. TWTC also may suspend Services and terminate this Agreement if Customer, following thirty (30) days' written notice (or shorter period if mandated by the governing authority or if necessary due to threat of imminent harm) fails to cure: (i) Customer's material breach of any provision of this Agreement or violation of any law, rule or regulation governing the Services; or (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver.

(b) **Termination Without Notice.** TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) **Post Termination.** Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Services in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. All requests for disconnection will be processed by TWTC in thirty (30) days or less. Customer must pay for Services until such disconnection actually occurs.

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Services hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Services, which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

**14. Termination Liability:** If TWTC terminates this Agreement or any Service Orders pursuant to Section 12 above (other than subsection b(iii)), or if Customer terminates this Agreement or any Service Orders for any reason other than pursuant to Section 13 above, all MRCs associated with the terminated Services for the balance of the applicable Service Term shall become immediately due and payable.

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries; (b) pursuant to a merger, acquisition, reorganization, sale or transfer of all or substantially all its assets; or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries; or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs or price lists on file with the appropriate public utilities commission or similar regulatory body set forth the entire agreement with respect to the

subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff or price list shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if the inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law - Litigation:** The interpretation of the rights and duties of the Parties and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and subject to the laws of the State of Kentucky excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. TWTC must provide such notice to Customer's billing address, and Customer must provide such notice to TWTC at 10475 Park Meadows Drive, Littleton CO 80124, Attn: Deputy General Counsel, **except that if Customer is disconnecting Services for any reason, it must deliver notice to TWTC either by facsimile to 303-803-9638 or by email to "CustomerCare@twtelecom.com"**. Notice by facsimile or email is deemed given when delivered.

**21. No Waiver:** A Party's failure to enforce any provision of this Agreement shall not be construed as a future or continuing waiver of such provision.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement nor the Services provided hereunder without the prior written consent of the other Party. Customer may not use TWTC's name, logo or service mark without TWTC's prior written consent. TWTC may use Customer's name and logo in materials presented to analysts and investors.

**23. Representations and Warranties:** Each Party represents and warrants that it is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Services will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provisions legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

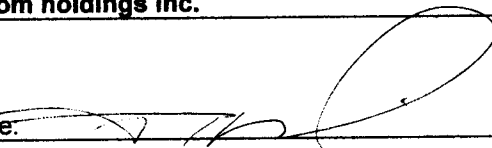
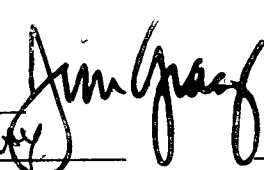
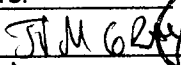
**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and

inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

**27. Confidentiality:** Each Party may disclose confidential information to the other Party in connection with this Agreement. Confidential information includes this Agreement, Service Orders, SLAs, all pricing information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to consultants or subcontractors of the receiving Party who agree to be bound by this section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement.

**Signature Block**

tw telecom holdings inc.	Customer: Lexington Fayette Urban Co Gov
Signature: 	Signature: 
Name: Franklin Paulin	Name: 
Title: V.P./General Manager	Title: Mayor
Date: 9.23.14	Date: 11/20/14
Sales Person: Roman Lind Jr/Brian Fox	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

**Customer Information and Contract Specifications**

**Customer Name:** Lexington Fayette Urban Co Gov

**Contract Status:**

- Standard Terms and Conditions on File as of 02/02/2011

**Service Order**

This Service Order is entered into by **tw telecom holdings inc.** on behalf of itself and its wholly owned operating subsidiaries (collectively "TWTC") and Lexington Fayette Urban Co Gov ("Customer"). It is effective upon execution by both Parties ("Effective Date").

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
600 OLD FRANKFORT CIR, LEXINGTON, KY 40510	Internet Access - 100 Mbps	New	24	1	\$860.00	\$0.00	\$860.00	\$0.00
	- Standard Total MRC = \$1481							
	- Standard Total NRC = \$700							
	- Service Level = 24x7x4							
	- Primary DNS (up to 10)							
	- Secondary DNS (up to 50)							
	Dynamic Capacity			1	\$99.00	\$0.00	\$99.00	\$0.00
	- Follow Standard Capacity Check Policy using Max BW.							
	- Max bandwidth available: up to 300 Mbps but no more than associated Transport.							
	- Peak Rate = \$0.1004 Per Mbps Per Hour							
	Internet Transport - Ethernet 1Gbps			1	\$340.00	\$0.00	\$340.00	\$0.00
	- Standard Total MRC = \$450							
	- Standard Total NRC = \$0							
	Site Readiness			1	\$0.00	\$0.00	\$0.00	\$0.00
	- Transport = Ethernet 1Gbps							
	- Extended Delivery - To The Customer Suite (twtc Provided)							
	- Site Readiness Delivery = Optical							
	- Includes connectivity from MPOE to Customer Suite or Server Room.							
	- Additional fees may apply based upon actual site conditions.							
	<b>Subtotal</b>						<b>\$1,299.00</b>	<b>\$0.00</b>
	<b>Totals</b>						<b>\$1,299.00</b>	<b>\$0.00</b>

Additional charges may be assessed if Customer causes a delay in installation or if wiring is required between the service address and the network demarcation point.

**Contract Provisions**



The Services ordered herein are governed by this Service Order and the tw telecom Standard Terms and Conditions executed by TWTC and Customer.

**Invoices**

Single prices shown above for bundled Services, or for Services provided at multiple locations, will be allocated among the individual services for the purpose of applying Taxes and regulatory fees and also may be divided on the Customer's invoice by location served.

**Activation Support**

If requested by Customer, TWTC may assist Customer with activating and/or configuring equipment on Customer's side of the Demarcation Point ("Activation Support"). Customer must compensate TWTC for such Activation Support at TWTC's then prevailing Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com).

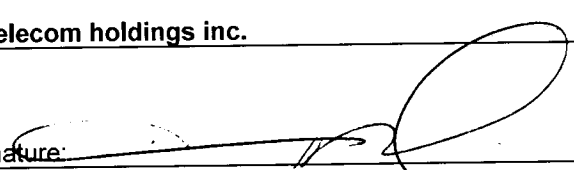
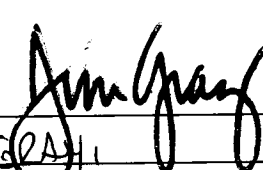
**Internet**

Usage: Customer shall not transmit or store material in violation of any Federal or state laws or regulations, including, but not limited to, obscenity, indecency, defamation or infringement of trademark or copyright. Customer agrees to adhere to TWTC's IP policies at <http://www.twtelecom.com/support-information/customer-resources/product-resources/ip-addressing-policy/> and <http://www.twtelecom.com/support-information/customer-resources/product-resources/peering-policy/> and TWTC's Acceptable Use Policy ("AUP") at <http://www.twtelecom.com/support-information/legal-information/acceptable-use-policy/>, which may be modified from time to time.

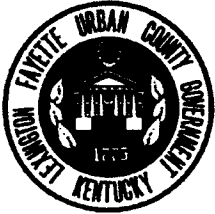
**Equipment Recovery**

Upon termination of a Service for any reason, TWTC or its representative will contact Customer to schedule a mutually acceptable time and date for TWTC's retrieval of TWTC Equipment located on Customer's premises. Alternatively, TWTC may request that Customer package TWTC's Equipment and return it, at TWTC's cost, to a location identified by TWTC. If Customer does not provide TWTC with access to its premises to allow TWTC to recover the TWTC Equipment within thirty (30) days following TWTC's contact, or if Customer does not ship the TWTC Equipment back to TWTC within the thirty (30) days, then TWTC may charge Customer for the replacement cost of the TWTC Equipment.

**Signature Block**

tw telecom holdings inc.	Customer: Lexington Fayette Urban Co Gov
Signature: 	Signature: 
Name: V.P./General Manager Franklin Paulin	Name: JIM GRAY
Title: General Manager	Title: Mayor
Date: 9.23.14	Date: 11/20/14
Sales Person: Roman Lind Jr	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.



# Lexington-Fayette Urban County Government

Lexington, Kentucky  
Horse Capital of the World

Division of Central Purchasing

Date of Issue: August 21, 2014

## INVITATION TO BID #138-2014 Internet Access Provider for Redundancy

**Bid Opening Date:** September 4, 2014

**Bid Opening Time:** 2:00 PM

**Address:** 200 East Main Street, 3<sup>rd</sup> Floor, Room 338, Lexington, Kentucky 40507

**Type of Bid:** Price Contract

**Pre Bid Meeting:** N/A

**Pre Bid Time:** N/A

**Address:** N/A

Sealed bids will be received in the office of the Division of Central Purchasing, 200 East Main Street, Lexington, Kentucky, until **2:00 PM**, prevailing local time on **09/04/2014**. Bids must be received by the above-mentioned date and time. Mailed bids should be sent to:

**Division of Central Purchasing  
200 East Main Street, Room 338  
Lexington, KY 40507, (859) 258-3320**

The Lexington-Fayette Urban County Government assumes no responsibility for bids that are not addressed and delivered as indicated above. **Bids that are not delivered to the Division of Central Purchasing by the stated time and date will be rejected.** All bids must be signed and have the company name and address, bid invitation number, and the name of the bid on the outside of the envelope.

Bids are to include all shipping costs to the point of delivery located at: 600 Old Frankfort Circle, Lexington, KY 40510-9689

**Bid Security Required:** \_\_\_ Yes  No *Cashier Check, Certified Check, Bid Bond (Personal checks and company checks will not be acceptable).*

**Performance Bond Required:** \_\_\_ Yes  No

___ Bid Specifications Met <input checked="" type="checkbox"/> <b>Check One:</b> ___ Exceptions to Bid Specifications. <i>Exceptions shall be itemized and attached to bid proposal submitted.</i>	<b>Proposed Delivery:</b> ___ days after acceptance of bid.
<b>Procurement Card Usage</b> —The Lexington-Fayette Urban County Government may be using Procurement Cards to purchase goods and services and also to make payments. Will you accept Procurement Cards? <input checked="" type="checkbox"/> Yes ___ No	

Submitted by: tw telecom holdings inc.

*Firm Name*

333 W. Vine Street, Suite 3300

*Address*

Lexington, KY 40507

*City, State & Zip*

**Bid must be signed:**  
*(original signature)*

**Signature of Authorized Company Representative – Title**

Franklin Paulin, Vice President, General Manager

*Representative's Name (Typed or printed)*

(502) 719-2276

(303) 803-9783

*Area Code - Phone – Extension*

*Fax #*

franklin.paulin@twtelecom.com

*E-Mail Address*

**The Affidavit in this bid must be completed before your firm can be considered for award of this contract.**

## **Exceptions/Clarifications to LFUCG ITB**

1. Page 8 of 18, "LFUCG Non-Appropriation Clause" Non-appropriation of funds:

In response to the first and second paragraphs:

**tw telecom** acknowledges that funding to pay for Services ordered under this Agreement is subject to annual appropriations by the appropriate governing body, and in the event adequate sums are not appropriated in any fiscal year to fund LGUCG's use of telecommunications services, **tw telecom** proposes that LGUCG may terminate this Agreement upon no less than [REDACTED] prior written notice. Such termination would not affect LGUCG's obligations with respect to payment for Services during any prior period. If LGUCG exercises this termination right, it may not during the unexpired original term of the Services obtain like services from another provider; and if funds are re-appropriated for a later fiscal year during the unexpired Service term, LGUCG will notify **tw telecom** and reinstate this Agreement.

In response to the third paragraph:

In the event of such a change in LFUCG's statutory authority, **tw telecom** proposes that LGUCG provide **tw telecom** as much notice as reasonably possible, but no less than 45 days.

2. Page 15 of 18, the third bullet point under the heading "Term":

**tw telecom** acknowledges that funding to pay for Services ordered under this Agreement is subject to annual appropriations by the appropriate governing body, and in the event adequate sums are not appropriated in any fiscal year to fund LGUCG's use of telecommunications services, **tw telecom** proposes that LGUCG may terminate this Agreement upon no less than 45 days prior written notice. Such termination would not affect LGUCG's obligations with respect to payment for Services during any prior period. If LGUCG exercises this termination right, it may not during the unexpired original term of the Services obtain like services from another provider; and if funds are re-appropriated for a later fiscal year during the unexpired Service term, LGUCG will notify **tw telecom** and reinstate this Agreement.

3. Page 16 of 18, Indemnification and Hold Harmless Provision, item 1, **tw telecom** proposes the following language in place of the paragraph in the RFP:

It is understood and agreed by the parties that Vendor hereby assumes the entire responsibility and liability for any and all damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Vendor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Vendor") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby

4. Page 16 of 18, Indemnification and Hold Harmless Provision, item 2, **tw telecom** proposes the following language in place of the paragraph in the ITB:

Vendor shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by bodily injury or physical damage to tangible property caused by the negligence or willful

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to ITB/Pricing*

misconduct of Vendor, to the extent that it is not caused by the negligence or willful misconduct of LFUCG.

5. Page 10 of 11, 12. Cancellation: Please refer to our response above for Page 8 of 18, "LFUCG Non-Appropriation Clause" Non-appropriation of funds.
6. Additional Requirements (following Specifications section):
  - The vendor agrees the LFUCG shall not pay interest or fees on overdue payments.

Please note: **tw telecom**'s billing terms are Net 30 days of invoice date. Customer invoices are available online within four days of issue date. Interest charges after the due date are built into the billing system.

7. Additional Requirements

The vendor shall guarantee the number of Internet Protocol hops from the data center connectivity ingress point to the vendors Internet Backbone to the Global Internet which will not exceed six (6) hops.

Please note: **tw telecom** cannot comply with the exact number of hops. Our Internet service uses BPG peering and reevaluates paths at regular intervals to ensure the service is delivered per the SLA which covers latency and packet loss.

**Please note:** Please refer to Attachment 4 for our sample contract. **tw telecom** provides services that are governed by these Standard Terms and Conditions and applicable service order forms, containing the details about how the services are provided, which are tied to **tw telecom**'s internal systems and are necessary to allow **tw telecom** to provide the services. To the extent contractual terms in this RFP conflict with the Standard Terms and Conditions, the Standard Terms and Conditions will prevail. Failure to include particular objections or exceptions in this response does not imply that **tw telecom** agrees to all terms in the Request for Proposal.

**AFFIDAVIT**

Comes the Affiant, Franklin Paulin, and after being first duly sworn under penalty of perjury as follows:

1. His/her name is Franklin Paulin and he/she is the individual submitting the bid or is the authorized representative of tw telecom holdings inc. the entity submitting the bid (hereinafter referred to as "Bidder")
2. Bidder will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the bid is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.
3. Bidder will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.
4. Bidder has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.
5. Bidder has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Bidder will not violate any provision of the campaign finance laws of the Commonwealth.
6. Bidder has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."
7. Bidder acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

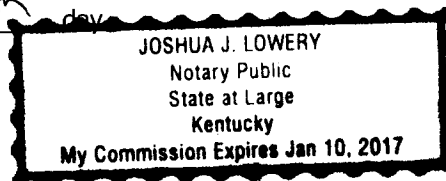
Further, Affiant ~~sayeth naught.~~ FR

STATE OF Kentucky

COUNTY OF Jefferson

The foregoing instrument was subscribed, sworn to and acknowledged before me  
by Franklin J Paulin on this the 28<sup>th</sup> day  
of August, 2014.

My Commission expires: 01/10/2017



[Signature]  
NOTARY PUBLIC, STATE AT LARGE

**Please refer to Section II. Bid Conditions, Item "U" prior to completing this form.**

## **I. GREEN PROCUREMENT**

### **A. ENERGY**

The Lexington-Fayette Urban County Government is committed to protecting our environment and being fiscally responsible to our citizens.

The Lexington-Fayette Urban County Government mandates the use of Energy Star compliant products if they are available in the marketplace (go to [www.Energystar.gov](http://www.Energystar.gov)). If these products are available, but not submitted in your pricing, your bid will be rejected as non-compliant.

ENERGY STAR is a government program that offers businesses and consumers energy-efficient solutions, making it easy to save money while protecting the environment for future generations.

#### Key Benefits

These products use 25 to 50% less energy  
Reduced energy costs without compromising quality or performance  
Reduced air pollution because fewer fossil fuels are burned  
Significant return on investment  
Extended product life and decreased maintenance

### **B. GREEN SEAL CERTIFIED PRODUCTS**

The Lexington-Fayette Urban County Government is also committed to using other environmentally friendly products that do not negatively impact our environment. Green Seal is a non-profit organization devoted to environmental standard setting, product certification, and public education.

Go to [www.Greenseal.org](http://www.Greenseal.org) to find available certified products. These products will have a reduced impact on the environment and on human health. The products to be used must be pre-approved by the LFUCG prior to commencement of any work in any LFUCG facility. If a Green Seal product is not available, the LFUCG must provide a signed waiver to use an alternate product. Please provide information on the Green Seal products being used with your bid response.

### **C. GREEN COMMUNITY**

**The Lexington-Fayette Urban County Government (LFUCG) serves as a principal, along with the University of Kentucky and Fayette County Public Schools, in the Bluegrass Partnership for a Green Community. The Purchasing Team component of the Partnership collaborates on economy of scale purchasing that promotes and enhances environmental initiatives. Specifically, when applicable, each principal is interested in obtaining best value products and/or services which promote environment initiatives via solicitations and awards from the other principals.**

**If your company is the successful bidder on this Invitation For Bid, do you agree to extend the same product/service pricing to the other principals of the Bluegrass Partnership for a Green Community (i.e. University of Kentucky and Fayette County Schools) if requested?**

Yes   X\*              No       

\*Any off-net locations would be priced on an Individual Case Basis (ICB).

## II. Bid Conditions

- A. No bid may be withdrawn for a period of sixty (60) days after the date and time set for opening.
- B. No bid may be altered after the date and time set for opening. In the case of obvious errors, the Division of Central Purchasing may permit the withdrawal of a bid. The decision as to whether a bid may be withdrawn shall be that of the Division of Central Purchasing.
- C. Acceptance of this proposal shall be enactment of an Ordinance by the Urban County Council.
- D. The bidder agrees that the Urban County Government reserves the right to reject any and all bids for either fiscal or technical reasons, and to award each part of the bid separately or all parts to one vendor.
- E. Minor exceptions may not eliminate the bidder. The decision as to whether any exception is minor shall be entirely that of the head of the requisitioning Department or Division and the Director of the Division of Central Purchasing. The Urban County Government may waive technicalities and informalities where such waiver would best serve the interests of the Urban County Government.
- F. Manufacturer's catalogue numbers, trade names, etc., where shown herein are for descriptive purposes and are to guide the bidder in interpreting the standard of quality, design, and performance desired, and shall not be construed to exclude proposals based on furnishing other types of materials and/or services. However, any substitution or departure proposed by the bidder must be clearly noted and described; otherwise, it will be assumed that the bidder intends to supply items specifically mentioned in this Invitation for Bids.
- G. The Urban County Government may require demonstrations of the materials proposed herein prior to acceptance of this proposal.
- H. Bids must be submitted on this form and must be signed by the bidder or his authorized representative. Unsigned bids will not be considered.
- I. Bids must be submitted prior to the date and time indicated for opening. Bids submitted after this time will not be considered.
- J. All bids mailed must be marked on the face of the envelope:

**"Bid on #138-2014 Internet Access Provider for Redundancy"**

and addressed to:        Division of Central Purchasing  
   200 East Main Street, Room 338  
   Lexington, Kentucky 40507

**The Lexington-Fayette Urban County Government assumes no responsibility for bids that are not addressed and delivered as indicated above. Bids that are not delivered to the Division of Central Purchasing by the stated time and date will be rejected.**

- K. Bidder is requested to show both unit prices and lot prices. In the event of error, the unit price shall prevail.
- L. A certified check or Bid Bond in the amount of XX percent of the bid price must be attached hereto. This check must be made payable to the Lexington-Fayette Urban County Government, and will be returned when the material and/or services specified herein have been delivered in accordance with specifications. In the event of failure to perform within the time period set forth in this bid, it is agreed the certified check may be cashed and the funds retained by the Lexington-Fayette Urban County Government as liquidated damages. Checks of unsuccessful bidders will be returned when the bid has been awarded.
- M. The delivery dates specified by bidder may be a factor in the determination of the successful bidder.
- N. Tabulations of bids received may be mailed to bidders. Bidders requesting tabulations must enclose a stamped, self-addressed envelope with the bid.
- O. The Lexington-Fayette Urban County Government is exempt from Kentucky Sales Tax and Federal Excise Tax on materials purchased from this bid invitation. Materials purchased by the bidder for construction projects are not tax exempt and are the sole responsibility of the bidder.

- P. All material furnished hereunder must be in full compliance with OSHA regulations.
- Q. If more than one bid is offered by one party, or by any person or persons representing a party, all such bids shall be rejected.
- R. Signature on the face of this bid by the Bidder or his authorized representative shall be construed as acceptance of and compliance with all terms and conditions contained herein.
- S. The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its sub-contracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.
- T. The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin;*
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;*
- (3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the non-discrimination clauses required by this section; and*
- (4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.*

The Act further provides:

KRS 45.610. Hiring minorities - Information required

- (1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetable.*
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.*

KRS 45.620. Action against contractor - Hiring of minority contractor or subcontractor

- (1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.*
- (2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.*



- (3) *The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.*

KRS 45.630 Termination of existing employee not required, when

*Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that that employee was employed prior to the date of the contract.*

KRS 45.640 Minimum skills

*Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job.*

It is recommended that all of the provisions above quoted to be included as special conditions in each contract.

In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his work-force in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

- U. Any party, firm or individual submitting a proposal pursuant to this invitation must be in compliance with the requirements of the Lexington-Fayette Urban County Government regarding taxes and fees before they can be considered for award of this invitation and must maintain a "current" status with regard to those taxes and fees throughout the term of the contract. The contractor must be in compliance with Chapter 13 from the Code of Ordinances of the Lexington-Fayette Urban County Government. The contractor must be in compliance with Ordinance 35-2000 pursuant to contractor registration with the Division of Building Inspection. If applicable, said business must have a Fayette County business license.

Pursuant to KRS 45A.343 and KRS 45A.345, the contractor shall

- (1) *Reveal any final determination of a violation by the contractor within the previous five year period pursuant to KRS Chapters 136 (corporation and utility taxes), 139 (sales and use taxes), 141 (income taxes), 337 (wages and hours), 338 (occupational safety and health of employees), 341 (unemployment and compensation) and 342 (labor and human rights) that apply to the contractor; and*
- (2) *Be in continuous compliance with the above-mentioned KRS provisions that apply to the contractor for the duration of the contract.*

A contractor's failure to reveal the above or to comply with such provisions for the duration of the contract shall be grounds for cancellation of the contract and disqualification of the contractor from eligibility for future contracts for a period of two (2) years.

- V. Vendors who respond to this invitation have the right to file a notice of contention associated with the bid process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the bid process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the bid process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with bid processes. If, based on this review, a bid process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

Notice of appeal of a bid recommendation must be filed within 3 business days of the bid recommendation by (1) sending a written notice, including sufficient documentation to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

### **III. Procurement Contract Bid Conditions**

- A. The terms of this agreement shall be for 2 year(s) from the date of acceptance of this contract by the Lexington-Fayette Urban County Government. This agreement may be automatically extended for an additional 3 (1) year(s) renewal. This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.
- B. Price Changes **(Space Checked Applies)**
  - 1. Prices quoted in response to the Invitation shall be firm prices for the first 90 days of the Procurement Contract. After 90 days, prices may be subject to revision and such changes shall be based on general industry changes. Revision may be either increases or decreases and may be requested by either party. There will be no more than one (1) price adjustment per quarter. Requests for price changes shall be received in writing at least twenty (20) days prior to the effective date and are subject to written acceptance before becoming effective. Proof of the validity of a request for revision shall be responsibility of the requesting party. The Lexington-Fayette Urban County Government shall receive the benefit of any decline that the seller shall offer his other accounts.
  - 2. No provision for price change is made herein. Prices are to be firm for the term of this contract.
  - 3. Procurement Level Contract
- C. If any contract item is not available from the vendor, the Lexington-Fayette Urban County Government, at its option, may permit the item to be back-ordered or may procure the item on the open market.
- D. All invoices must bear reference to the Lexington-Fayette Urban County Government Purchasing document numbers which are being billed.
- F. This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.
- G. No substitutions for articles specified herein may be made without prior approval of the Division of Central Purchasing.

## **LFUCG Non-Appropriation Clause**

Contractor acknowledges that the LFUCG is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the LFUCG's obligations under this contract, then this contract shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the LFUCG shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in the LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the LFUCG's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the LFUCG upon written notice to Contractor of such limitation or change in the LFUCG's legal authority.

## EQUAL OPPORTUNITY AGREEMENT

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### The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.*

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

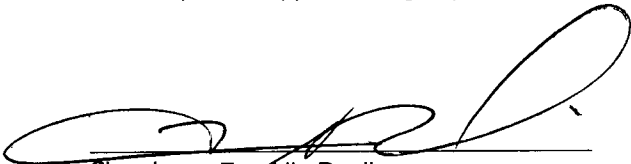
*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.*

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

### Bidders

*I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.*

  
Signature Franklin Paulin,  
Vice President/General Manager

tw telecom holdings inc.  
Name of Business

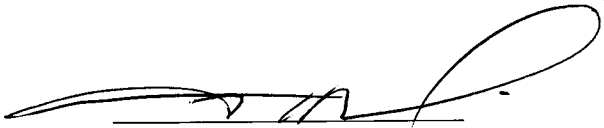
## GENERAL PROVISIONS OF BID CONTRACT

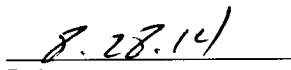
By signing the below, bidder acknowledges that it understands and agrees with the following provisions related to its bid response and the provision of any goods or services to LFUCG upon selection by LFUCG pursuant to the bid request:

1. Bidder shall comply with all Federal, State & Local regulations concerning this type of service or good.
2. Failure to submit ALL forms and information required by LFUCG may be grounds for disqualification.
3. Addenda: All addenda, if any, must be considered by the bidder in making its response, and such addenda shall be made a part of the requirements of the bid contract. Before submitting a bid response, it is incumbent upon bidder to be informed as to whether any addenda have been issued, and the failure of the bidder to cover any such addenda may result in disqualification of that response.
4. Bid Reservations: LFUCG reserves the right to reject any or all bid responses, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by bidder in the preparation of its response.
6. Changes/Alterations: Bidder may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the bid response, and received by LFUCG prior to the scheduled closing time for receipt of bids, will be accepted. The bid response when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of bid response".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from any bidder.
8. Bribery Clause: By his/her signature on its response, bidder certifies that no employee of his/hers, any affiliate or subcontractor, has bribed or attempted to bribe an officer or employee of the LFUCG.
9. Additional Information: While not necessary, the bidder may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the bid response. Additional documentation shall not serve as a substitute for other documentation which is required by the LFUCG to be submitted with the bid response.
10. Ambiguity, Conflict or other Errors: If a bidder discovers any ambiguity, conflict, discrepancy, omission or other error in the bid request of LFUCG, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting its bid response, the bidder agrees that it has carefully examined the specifications and all provisions relating to LFUCG's bid request, including but not limited to the bid contract. By submission of its bid response, bidder states that it understands the meaning, intent and requirements of LFUCG's bid request and agrees to the same. The successful bidder shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to bidder shall be authorized for services, expenses, or goods reasonably covered under these provisions that the bidder omits from its bid response. \*
12. Cancellation: LFUCG may unilaterally terminate the bid contract with the selected bidder(s) at any time, with or without cause, by providing at least thirty (30) days advance written notice unless a different advance written notice period is negotiated prior to contract approval. Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. Assignment of Contract: The selected bidder(s) shall not assign or subcontract any portion of the bid contract with LFUCG without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. No Waiver: No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this bid proposal or bid contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. Authority to do Business: Each bidder must be authorized to do business under the laws of the Commonwealth of Kentucky and must be in good standing and have full legal capacity to provide the goods or services specified in the bid proposal. Each bidder must have all necessary right and lawful authority to submit the bid response and enter into the bid contract for the full term hereof including any necessary corporate or other action authorizing the bidder to submit the bid response and enter into this bid contract. If requested, the bidder will provide LFUCG with a copy of a corporate resolution authorizing this action and/or a letter from an attorney confirming that the proposer is authorized to do business in the Commonwealth of Kentucky. All bid responses must be signed by a duly authorized officer, agent or employee of the bidder.
16. Governing Law: This bid request and bid contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this matter, the bidder agrees that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division and that the bidder expressly consents to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to these matters or any rights or obligations arising thereunder.
17. Ability to Meet Obligations: Bidder affirmatively states that there are no actions, suits or proceedings of any kind pending against bidder or, to the knowledge of the bidder, threatened against the bidder before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of bidder to perform its obligations under this bid response or bid contract, or which question the legality, validity or enforceability hereof or thereof.
18. Bidder understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Bidder is an independent contractor at all times related to the bid response or bid contract.
19. If any term or provision of this bid contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

\* Please note: tw telecom has attached exceptions/clarifications per the Cover Sheet instructions.

  
Signature Franklin Paulin,  
Vice President/General Manager

  
Date

Lexington-Fayette Urban County Government  
Office of Information Technology  
Bid #138-2014 Internet Access Provider for Redundancy

**SPECIFICATIONS**

The Lexington-Fayette Urban County Government (LFUCG) is accepting bids for Internet Access Provider for Redundancy. This secondary internet provider is for the purpose of load balancing Internet traffic to our existing Internet connection. It is planned and expected that the LFUCG will continue to rely on the existing Internet provider and connection for connectivity.

However, the LFUCG intends to ensure that traffic can constantly flow across this secondary connection. Both connections will serve as a simultaneous load balanced connection, still functioning if one of the two Internet lines goes down. Both Internet providers will work together to insure proper broadcast of our currently owned 199.165.138.0 IP block and domain name(s).

The existing primary connection terminates at the LFUCG's data center located at 200 East Main Street, 7<sup>th</sup> Floor, Lexington, Kentucky 40507.

The requested secondary connection will temporarily terminate at the **Community Corrections Center, 600 Old Frankfort Circle, Lexington, Kentucky, 40510-9689 Data center**. In approximately two years the requested secondary connection will be relocated to **PSOC, 115 Cisco Rd, Lexington, Kentucky, 40504**. Down time of the secondary internet line relocation will be kept at a minimum. Costs for relocation will be negotiated at that time.

**NOTE:** QX.net is not eligible to submit a bid for this commodity.

**All respondents must meet the following requirements:**

1	The requested secondary connection will terminate at the <b>Community Corrections Center, 600 Old Frankfort Circle, Lexington, Kentucky, 40510-9689</b> , and be moved to <b>PSOC, 115 Cisco Rd, Lexington, Kentucky, 40504</b> in approximately two years.
2	This secondary Internet connection must be capable of being simultaneously redundant to existing Internet connection.
3	Provide a physical street map indicating the precise route that will be used to provide the service.
4	This secondary Internet connection must not rely on any components used to provide the existing service.
5	The secondary service must be a burstable service and support speeds up to a constant 100 Mbps at minimum
6	Bidder will provide a summary of your internal redundancy and contingency to keep your network operational in the event of a city wide or regional disaster.

Response: Please refer to "Response to Specifications" section which follows the "Response to ITB" tab for a point-to-point response.

## **Additional Requirements:**

### **Internet connectivity from the ISP to the Data Center**

- The connectivity must be via a dedicated, non-shared telecommunications access circuit.
- The dedicated circuit shall be a non-monetary charge circuit between the LFUCG and the ISP providing the service.
- Non-monetary shall also include no installation fees or monthly recurring charges of any type.

### **The connection speed to the Internet shall be a minimum of 100 Megabit (100% constant bit rate guaranteed)**

- Internet will connect to existing standard Ethernet equipment.
- Vendor agrees to guarantee the provisional data rate at all times under normal network conditions from the data center premise equipment thru the vendors Internet backbone.
- Additional bandwidth may be available above the minimum speed, but NOT guaranteed.
- The vendor agrees that speed up-grades will be possible with the installed circuit and equipment without having to re-engineer the line or replacing any installed equipment on the LFUCG side.
- The vendor agrees that there will be no monetary costs for any hardware or software associated with any requested speed up-grades.

The vendor shall guarantee the number of Internet Protocol hops from the data center connectivity ingress point to the vendors Internet Backbone to the Global Internet which will not exceed six (6) hops.

### **The vendor shall provide, install, and maintain all necessary communications equipment and software to link the data center to the Internet circuit, including providing an un-interruptive power supply (UPS) for vendor supplied equipment**

- The vendor shall be responsible for the on-going management, maintenance, and troubleshooting of all components up to the demarcation point.
- The demarcation point for the Internet service shall be at (and including) the Ethernet LAN port on the vendor supplied equipment that connects to the data center
- The vendor shall be responsible for configuration and programming of the required premise equipment.
- The vendor shall provide, install, and configure all hardware and software required for



Internet access on site within in the data center.

- The vendor shall accomplish this through vendor's company representatives or authorized third party partner providing all local support.

**The vendor shall adhere to ARIN's recommended guidelines for allocation of the Internet IP addresses to customers utilizing the already assigned IP block 199.165.138.0.**

- The Vendor shall agree to host the EXISTING class C license that the LFUCG already owns.
- The vendor agrees to provide the data center with an uncensored USENET news feed at no additional cost, if required by the LFUCG.

**The vendor shall provide Web-based reports 24 hours a day, 7 days a week via an Internet web page. Available reports will include, but will not be limited to:**

- Access to such reports will be password protected.
- Implementation status reports
- Network availability statistics
- Bandwidth utilization reports
- Trouble ticket queries
- Vendor agrees given phone number shall be maintained and active for trouble reporting 24 hours by 7 days.
- Vendor agrees Internet access "down time" shall be minimal if any at all.
- Down time shall equate to the data center not having access to the backbone of the global Internet at the guaranteed rate of speed.
- Vendor agrees Internet down time shall not go over 24 hours at any given time after either party has been notified.
- At LFUCG's option, vendor agrees if Internet down time exceeds 24 hours, vendor shall work with the LFUCG in finding and implementing an alternate temporary link to the Internet at vendor's expense.
- The LFUCG understands that the alternate temporary link would not be the same guaranteed speed stated in the contract.
- Vendor agrees this bid specification supersedes vendor's policy.

**TERM:**

- The term of this agreement shall be a period of 24 months commencing on the date on which the Internet service is completed.
- The vendor shall understand that funds are allocated by the LFUCG on an annual fiscal basis (fiscal year beginning July 1st, and ending June 30th).
- The vendor agrees should funds not be allocated for subsequent years, the agreement may be cancelled at the end of the fiscal year with no penalty for the LFUCG.
- The vendor agrees the LFUCG shall not pay interest or fees on overdue payments.
- Vendor understands that payments can only be made from an actual invoice or copy of invoice showing correct amount per contract, and referencing correct PO number.
- Vendor must be licensed and insured.
- Vendor will abide by all local, state, and federal laws obtaining to Internet service installations.
- The laws of the State of Kentucky shall govern any agreements.

Please refer to the "Response to Term" section which follows the "Response to ITB" tab in our proposal.

**PRICING:**

**100 Mb minimum:**

1. Price per Month for minimum 100 Mb line: \$ 1,335.00
2. Price per Year for minimum 100 Mb line if prepaid 1yr at a time in advance: \$ Not available

Please note: In addition to the above pricing, tw telecom would like to offer its Dynamic Capacity option for \$1,299 (includes 100 Mbps circuit). As is the case with our burstable Internet option, usage charges for Internet usage above 100 Mbps would also apply. Please see our Solution Overview section for additional details regarding our Dynamic Capacity offering.

## **Response to Specifications**

### **SPECIFICATIONS**

The Lexington-Fayette Urban County Government (LFUCG) is accepting bids for Internet Access Provider for Redundancy. This secondary internet provider is for the purpose of load balancing Internet traffic to our existing Internet connection. It is planned and expected that the LFUCG will continue to rely on the existing Internet provider and connection for connectivity.

However, the LFUCG intends to ensure that traffic can constantly flow across this secondary connection. Both connections will serve as a simultaneous load balanced connection, still functioning if one of the two Internet lines goes down. Both Internet providers will work together to insure proper broadcast of our currently owned 199.165.138.0 IP block and domain name(s).

The existing primary connection terminates at the LFUCG's data center located at 200 East Main Street, 7th Floor, Lexington, Kentucky 40507.

The requested secondary connection will temporarily terminate at the Community Corrections Center, 600 Old Frankfort Circle, Lexington, Kentucky, 40510-9689 Data center. In approximately two years the requested secondary connection will be relocated to PSOC, 115 Cisco Rd, Lexington, Kentucky, 40504. Down time of the secondary internet line relocation will be kept at a minimum. Costs for relocation will be negotiated at that time.

**NOTE: QX.net is not eligible to submit a bid for this commodity.**

**All respondents must meet the following requirements:**

1	<p>The requested secondary connection will terminate at the <b>Community Corrections Center, 600 Old Frankfort Circle, Lexington, Kentucky, 40510- 9689, and be moved to PSOC, 115 Cisco Rd, Lexington, Kentucky, 40504</b> in approximately two years.</p> <p><b><u>Response:</u></b> If service relocates after the initial 2-year term, <b>tw telecom</b> would need to evaluate the location to determine if any capital expenditures would be required.</p>
2	<p>This secondary Internet connection must be capable of being simultaneously redundant to existing Internet connection.</p> <p><b><u>Response:</u></b> <b>tw telecom</b> complies.</p>
3	<p>Provide a physical street map indicating the precise route that will be used to provide the service.</p> <p><b><u>Response:</u></b> <b>tw telecom</b> complies. Please refer to Attachment 1 for the physical street map.</p>
4	<p>This secondary Internet connection must not rely on any components used to provide the existing service.</p> <p><b><u>Response:</u></b> <b>tw telecom</b> complies.</p>

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to Specifications*

5	<p>The secondary service must be a burstable service and support speeds up to a constant 100 Mbps at minimum.</p> <p><b><u>Response:</u> tw telecom</b> complies.</p>
6	<p>Bidder will provide a summary of your internal redundancy and contingency to keep your network operational in the event of a city wide or regional disaster.</p> <p><b><u>Response:</u> tw telecom</b> complies. <b>tw telecom</b>'s robust national 10 Gbps IP MPLS backbone has a redundant IP core architecture, diverse network routes, and strong peering relationships that ensure traffic reaches its destination quickly and reliably.</p> <p><b>tw telecom</b> is currently classified as a Tier II ISP - as we have both peering and transit relationships to exchange traffic across the Internet. <b>tw telecom</b> differentiates itself in this area by maintaining both peering and transit relationships for diversity of traffic delivery.</p> <p>All <b>tw telecom</b> cities access the same peering partners/relationships across the country and it is our policy to have at least three connections with our main peering partners so if one location has a problem, there are other peering points across the nation through which traffic can flow. In addition, we have transit relationships that the traffic can be sent through in the event of a major problem with another network.</p>

**Additional Requirements:**

**Internet connectivity from the ISP to the Data Center**

- The connectivity must be via a dedicated, non-shared telecommunications access circuit.

**Response:**

**tw telecom** complies.

- The dedicated circuit shall be a non-monetary charge circuit between the LFUCG and the ISP providing the service.

**Response:**

All pricing components for our recommended solution are provided in the pricing table. No additional fees apply with the exception of any applicable fees or taxes.

- Non-monetary shall also include no installation fees or monthly recurring charges of any type.

**Response:**

All one-time installation fees have been waived. All end user fees are included in the pricing components of our recommended solution.

**The connection speed to the Internet shall be a minimum of 100 Megabit (100% constant bit rate guaranteed)**



**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to Specifications*

- Internet will connect to existing standard Ethernet equipment.

**Response:**

tw telecom complies.

- Vendor agrees to guarantee the provisional data rate at all times under normal network conditions from the data center premise equipment thru the vendors Internet backbone.

**Response:**

tw telecom's Internet services are backed by a Service Level Agreement (SLA). Please refer to Attachment 2 for the SLA.

- Additional bandwidth may be available above the minimum speed, but NOT guaranteed.

**Response:**

tw telecom complies.

- The vendor agrees that speed up-grades will be possible with the installed circuit and equipment without having to re-engineer the line or replacing any installed equipment on the LFUCG side.

**Response:**

tw telecom complies.

- The vendor agrees that there will be no monetary costs for any hardware or software associated with any requested speed up-grades.

**Response:**

tw telecom complies.

**The vendor shall guarantee the number of Internet Protocol hops from the data center connectivity ingress point to the vendors Internet Backbone to the Global Internet which will not exceed six (6) hops.**

**Response:**

tw telecom cannot comply with the exact number of hops. Our Internet service uses BPG peering and reevaluates paths at regular intervals to ensure the service is delivered per the SLA which covers latency and packet loss.

**The vendor shall provide, install, and maintain all necessary communications equipment and software to link the data center to the Internet circuit, including providing an un-interruptive power supply (UPS) for vendor supplied equipment**

**LFUCG  
Invitation to Bid # 138-2014 Internet  
Access Provider for Redundancy**

*Response to Specifications*

**Response:**

Ethernet Internet Service (EIS) is delivered directly from **tw telecom**'s MetroE switch, which, per company policy, is powered by a DC power plant supported by battery string(s) providing 6-10 hours uninterrupted power.

Preventative maintenance for the switch and power plant is performed annually and batteries are replaced every three years.

- **The vendor shall be responsible for the on-going management, maintenance, and troubleshooting of all components up to the demarcation point.**

**Response:**

**tw telecom** complies.

- **The demarcation point for the Internet service shall be at (and including) the Ethernet LAN port on the vendor supplied equipment that connects to the data center**

**Response:**

**tw telecom** complies.

- **The vendor shall be responsible for configuration and programming of the required premise equipment.**

**Response:**

**tw telecom** complies.

- **The vendor shall provide, install, and configure all hardware and software required for Internet access on site within in the data center.**

**Response:**

**tw telecom** complies.

- **The vendor shall accomplish this through vendor's company representatives or authorized third party partner providing all local support.**

**Response:**

**tw telecom** complies.

**The vendor shall adhere to ARIN's recommended guidelines for allocation of the Internet IP addresses to customers utilizing the already assigned IP block 199.165.138.0.**

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to Specifications*

**Response:**

tw telecom complies.

- **The Vendor shall agree to host the EXISTING class C license that the LFUCG already owns.**

**Response:**

tw telecom complies.

- **The vendor agrees to provide the data center with an uncensored USENET news feed at no additional cost, if required by the LFUCG.**

**Response:**

At this time, **tw telecom** does not provide news feed services. There are numerous third party providers that specialize in these services.

**The vendor shall provide Web-based reports 24 hours a day, 7 days a week via an Internet web page. Available reports will include, but will not be limited to:**

- **Access to such reports will be password protected.**
- **Implementation status reports**
- **Network availability statistics**
- **Bandwidth utilization reports**
- **Trouble ticket queries**

**Response:**

**tw telecom** complies. **tw telecom** provides MyPortal 24x7x365 at no additional charge. LFUCG can designate MyPortal users who can have access to reporting and statistical information on your Internet services.

MyPortal is equipped with easy-to-use tools that allow you to manage your network "Anytime from Anywhere". With a simple one-time registration, you'll be able to:

- Check the status of your order
- Access near real-time bandwidth utilization for select services
- Report problems and track resolution
- Submit change requests for your Internet service
- View invoices
- Pay bills online

Please refer to Attachment 3 for details on MyPortal.

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to Specifications*

- Vendor agrees given phone number shall be maintained and active for trouble reporting 24 hours by 7 days.

**Response:**

tw telecom complies. The National Operations Centers (NOCs) can be reached 24x7x365 at: 800-829-0420.

- Vendor agrees Internet access “down time” shall be minimal if any at all.
- Down time shall equate to the data center not having access to the backbone of the global Internet at the guaranteed rate of speed.
- Vendor agrees Internet down time shall not go over 24 hours at any given time after either party has been notified. SLA

**Response:**

Please refer to Attachment 2 for the SLA.

- At LFUCG’s option, vendor agrees if Internet down time exceeds 24 hours, vendor shall work with the LFUCG in finding and implementing an alternate temporary link to the Internet at vendor’s expense.
- The LFUCG understands that the alternate temporary link would not be the same guaranteed speed stated in the contract.
- Vendor agrees this bid specification supersedes vendor’s policy.

**Response:**

Please refer to Attachment 2 for the SLA for all service guarantees and remedies.

**TERM:**

- The term of this agreement shall be a period of 24 months commencing on the date on which the Internet service is completed.

**Response:**

tw telecom complies.

- The vendor shall understand that funds are allocated by the LFUCG on an annual fiscal basis (fiscal year beginning July 1st, and ending June 30th).
- The vendor agrees should funds not be allocated for subsequent years, the agreement may be cancelled at the end of the fiscal year with no penalty for the LFUCG.

**Response:**

tw telecom acknowledges that funding to pay for Services ordered under this Agreement is subject to annual appropriations by the appropriate governing body, and in the event adequate sums are not appropriated in any fiscal year to fund LGUCG’s use of telecommunications services, tw telecom



**LFUCG**  
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**Access Provider for Redundancy**

*Response to Specifications*

proposes that LGUCG may terminate this Agreement upon no less than 45 days prior written notice. Such termination would not affect LGUCG's obligations with respect to payment for Services during any prior period. If LGUCG exercises this termination right, it may not during the unexpired original term of the Services obtain like services from another provider; and if funds are re-appropriated for a later fiscal year during the unexpired Service term, LGUCG will notify **tw telecom** and reinstate this Agreement.

- **The vendor agrees the LFUCG shall not pay interest or fees on overdue payments.**

**Response:**

**tw telecom**'s billing terms are Net 30 days of invoice date. Customer invoices are available online within four days of issue date. Interest charges after the due date are built into the system.

- **Vendor understands that payments can only be made from an actual invoice or copy of invoice showing correct amount per contract, and referencing correct PO number.**

**Response:**

**tw telecom** complies. **tw telecom** invoices customers once a month under four billing cycle options – the 1st, 10th, 15th, or 20th. Invoices are mailed within four business days after the billing cycle. Customers can also access invoices and download billing data on-line through our secure web portal, MyBilling. **tw telecom**'s invoice breaks out services first by type of service, then by service location ID. All invoice data is available through MyBilling if LFUCG needs to consolidate beyond what the invoice provides. When registered for MyBilling, LFUCG can also use **tw telecom**'s electronic invoice payment service, ePay, which provides the added convenience of paying invoices on-line.

- **Vendor must be licensed and insured.**

**Response:**

**tw telecom** complies.

- **Vendor will abide by all local, state, and federal laws obtaining to Internet service installations.**

**Response:**

**tw telecom** complies.

- **The laws of the State of Kentucky shall govern any agreements.**

**Response:**

**tw telecom** complies.

**RISK MANAGEMENT PROVISIONS  
INSURANCE AND INDEMNIFICATION  
BID #138-2014 INTERNET ACCESS PROVIDER FOR REDUNDANCY**

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**INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- (1) It is understood and agreed by the parties that Vendor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Vendor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Vendor") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) Vendor shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Vendor's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Vendor; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) In the event LFUCG is alleged to be liable based upon the above, Vendor shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.
- (4) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (5) LFUCG is a political subdivision of the Commonwealth of Kentucky. Vendor acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Vendor in any manner.

**FINANCIAL RESPONSIBILITY**

BIDDER/VENDOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

**INSURANCE REQUIREMENTS**

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AAND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT. \*

\*Please note: tw telecom has provided minor clarifications to the Insurance Requirements which are provided in our proposal.

Required Insurance Coverage

Vendor shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the provision of equipment or goods or the performance of the work or services hereunder by Vendor. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy will have Products Liability coverage or endorsement.
- d. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- e. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

**IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN**

**A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.** Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of Vendor's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Vendor satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Vendor agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

**Verification of Coverage**

Vendor agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

**Right to Review, Audit and Inspect**

Vendor understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

**DEFAULT**

Vendor understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Vendor for any such insurance premiums purchased, or suspending or terminating the work.

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## **Risk Management Provisions**

tw telecom provides the following clarifications and request for modifications indicated in red below.

Please note: Our current deductibles are:

- General Liability \$25,000 per occurrence deductible
- Workers Compensation/Employers Liability \$150,000 per occurrence deductible
- Commercial Automobile Liability \$100,000 per occurrence deductible

### **Required Insurance Coverage**

Vendor shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the provision of equipment or goods or the performance of the work or services hereunder by Vendor. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01 or similar form providing equivalent coverage)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- The General Liability Policy will have Products Liability coverage or endorsement.
- LFUCG shall be provided at least 30 days advance written notice ~~via certified mail, return receipt requested,~~ in the event any of the required policies are canceled or non-renewed.
- Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Risk Management Provisions*

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of Vendor's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Vendor satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Vendor agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Verification of Coverage

Vendor agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

Vendor understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

**DEFAULT**

Vendor understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Vendor for any such insurance premiums purchased, or suspending or terminating the work.

## **Solution Overview**

**tw telecom** is proposing our Burstable Internet Access service to meet the requirements outlined in the ITB. As an alternative solution, we are proposing our Ethernet Internet Service (EIS) with Dynamic Capacity. The following information provides an overview of the features and benefits of the services.

### **Internet Access Overview**

**tw telecom**'s Internet services deliver high-quality, high-speed connections for companies who depend on the Internet for critical applications. All Internet access is not created equal.

**tw telecom**'s robust 10 Gbps IP MPLS backbone with a redundant IP core architecture, diverse network routes, and strong peering relationships that ensure traffic reaches its destination quickly and reliably make that very apparent. **tw telecom**'s Internet services aren't equal—they're better.

Because of our peering arrangements with regional, national and international networks, Internet traffic along **tw telecom**'s network requires fewer hops, providing your traffic a more direct path to its final destination. As a result of its design and strong peering arrangements, **tw telecom**'s IP network is world class and noticeably better.

### **Internet Product Options**

**tw telecom** offers a comprehensive suite of high-quality, high-speed Internet options including standard (flat-rated) and burstable (usage-based) Internet options delivered across your choice of Ethernet connections from 10 Mbps to 10 Gbps ports, or traditional connections (TDM) from T1 to OC48.

Burstable Internet service enables LFUCG to commit to a minimum bandwidth level—Committed Information Rate (CIR)—and receive access to additional bandwidth up to a defined maximum bandwidth level—Peak Information Rate (PIR)—for sporadic IP traffic. Burstable Internet service is a good solution for customers who have spikes in their Internet traffic, or those who are very dependent on bandwidth availability.

### **Features**

- Service Level Agreements (SLAs)
- Primary and Secondary Domain Name Server (DNS)
- IPv4 and IPv6 address space
- 24x7x365 troubleshooting on **tw telecom**-owned equipment
- On-line bandwidth utilization reports
- Backup Mail Exchange (MX) service
- BGP peering
- Optional Services:
  - Managed Router Service
  - Managed Firewall
  - Distributed Denial of Service (DDoS) Scrubbing
  - Shared Web/E-mail Hosting
  - Dynamic Capacity®

# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

*Solution Overview*

### Customer Benefits

- **Reliable Speed** – **tw telecom**'s impressive 10 Gbps IP backbone with a redundant IP core architecture, diverse network routes, and strong peering relationships to ensure traffic reaches its destination quickly and reliably.
- **Scalability** – **tw telecom** provides Ethernet and traditional connections from 1.5 Mbps to 10 Gbps, providing scalable solutions that can easily be increased to meet your ongoing bandwidth requirements.
- **Coverage** – **tw telecom**'s extensive metro footprint directly connects more end-user buildings than any other competitive service provider in the United States. We are continually adding new buildings to our network.
- **Flexibility** – By owning our own networks, both IP backbone and local, **tw telecom** can quickly provision services to actively meet your business needs.
- **Service** – **tw telecom**'s focus on execution and service delivery is unparalleled and widely recognized as such across the industry.
- **Confidence** – SLAs are standard with **tw telecom**'s Internet services and are backed with money back guarantees.
- **Peace of Mind** – **tw telecom** operates two NOCs to monitor and support our customers 24x7x365.

### Burstable Internet Access Overview

Burstable Internet service enables LFUCG to commit to a minimum bandwidth level—Committed Information Rate (CIR)—and receive access to additional bandwidth up to a defined maximum bandwidth level—Peak Information Rate (PIR)—for sporadic IP traffic. Burstable Internet service is a good solution for customers who have spikes in their Internet traffic, or those who are very dependent on bandwidth availability. A monthly recurring charge is billed for the CIR and any applicable burstable usage for the billing period is billed separately as Burstable Internet Usage.

### Usage Calculation

Customers' usage levels are pulled every five minutes on both inbound and outbound traffic streams. At the end of each bill cycle, **tw telecom** calculates customers' usage at the 95th percentile for both inbound and outbound traffic and bills based on the higher of the two.

Samples are taken from the **tw telecom** edge device for all burstable customers on both inbound and outbound traffic. Inbound traffic is defined as traffic from customer's premises to the Internet. Outbound traffic is traffic from the Internet to customer's premises. At the end of the billing period, customers' bandwidth samples are ordered from lowest to highest and the usage level at the 95th percentile is determined.

### Dynamic Capacity for Internet Services

- Dynamic Capacity allows your organization to easily augment your Internet bandwidth up to 300% in real-time to meet the fluctuating demands of your business
  - No down time, no paperwork, no waiting for a technician



# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Solution Overview

- Use simple tools within MyPortal to:
  - Make ad hoc changes as needed by the hour
  - Schedule a recurring or future bandwidth change
  - Combine with Enhanced Management to trigger automatic bandwidth increases based on utilization performance thresholds
  - See the exact costs prior to executing a change
    - A monthly billing cap ensures you will not be billed for more than 72 hours of 3x usage per month, regardless of actual usage
  - Supports 2x or 3x increases of Internet bandwidth up to 6 Gbps on a 10 Gbps User Network Interface (UNI)
- Includes comprehensive reporting for all current and past transactions
- Includes email notification with details for each event as it occurs
- Includes 10 "Get Started" hours to try out Dynamic Capacity and all its functionality in the first 30 days before any billing occurs

The screenshot displays the 'Activate Now' section of a web portal. At the top, it says 'Schedule Title: Activate Now 04/24/2014' and 'Duration: 0 hrs'. Below this is a large black button labeled 'Change my bandwidth for:'. Underneath the button are two radio buttons: 'Select All' (selected) and 'Collapse All'. To the left is a 'Schedule Event' section with instructions: 'Use the slider below to choose your desired bandwidth and select "Proceed with Activation" if you would like to create a scheduled or recurring event; select the "Schedule Event" tab on the left!'. Below the instructions is a table with columns: 'Service Address', 'State', 'POP', and 'Circuit ID'. The first row shows '1200 SMITH ST. LAGUNA, TX, N.A., 19XEFN17276 TWCS'. Below the table is a slider for 'Dynamic Capacity' with a value of '1X (50%)'. Below the slider are two options for 'Monthly DC billing cap': 'At 2x you reach your cap in 144 hrs' OR 'At 3x you reach your cap in 72 hrs'. Below these options is the text 'Your next billing cycle for DC starts on: 2/24/2014 10:00:00 AM'. A second row in the table shows '10855 TANNER RD. HOUSTON, TX, N.A., 19XEFN17277 TWCS'. At the bottom, a disclaimer states: 'Any changes to your bandwidth will be charged in 1 hour increments with a minimum charge of 1 hour. The Dynamic Capacity bandwidth increases displayed above are in addition to your purchased bandwidth.'

# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Solution Overview

### Event Notification

E-mail notifications are generated at activation and deactivation of each Dynamic Capacity event, as well as 24 hour reminders for events lasting longer than 24 hours. The customer determines who will receive notification when setting up the event.

Notification e-mails include:

- Start and end date (if scheduled)
- Event name
- Circuit ID and address
- Bandwidth amount
- Hourly cost and total running cost of the event
- Initiator of the event
- Account number

tw telecom

### 24 Hour Reminder

This is a reminder your **Dynamic Capacity** request has been active for the past 24 hours.

Dynamic Capacity bandwidth requests that have a scheduled End date/time will deactivate at that time. Requests without a scheduled End date/time will remain active until a request is placed to deactivate or decrease the bandwidth.

To place a Dynamic Capacity request to deactivate or decrease your bandwidth, simply return to MyPortal at [MyPortal](#)

To place a new Dynamic Capacity request, simply return to [MyPortal](#)

If you have additional questions, contact Customer Care at (800) 829-0420

Thank you for choosing tw telecom!

[MyPortal](#)

<b>Request Number:</b>	IN000002700
<b>Start Date/Time:</b>	Tue, May 07, 2013 09:00:26 AM CDT
<b>End Date/Time:</b>	None
<b>Event Name:</b>	Activate Now 05/07/2013
<b>Circuit ID:</b>	VLXX/123456/TWCS
<b>Location A:</b>	123 Main St, Denver CO 80111
<b>Location Z:</b>	453 Broad St, Los Angeles CA 90001
<b>Previous Bandwidth:</b>	40Mbps
<b>Current Bandwidth:</b>	100Mbps
<b>Dynamic Capacity Rate/Hour:</b>	\$7.48
<b>Dynamic Capacity Running Total:</b>	\$718.27
<b>Request Initiated by:</b>	jsmith@demo.com
<b>Account Number:</b>	01234

**Attachment 1 – Fiber Route Map**



## **Attachment 2 - Service Level Agreement**



Internet Services  
(4-10-12).pdf

# Service Level Agreement and Product Description



## Internet Services

### I. Product Description

#### Internet Services

TWTC offers a comprehensive suite of high-quality, high-speed Internet options -- Ethernet connections from 10Mbps ports to 10Gbps ports, as well as traditional connections (TDM) from T1 to OC48. Internet Services are high capacity, full duplex, Internet Protocol ("IP") Services connecting the Customer's network to TWTC's Internet backbone. Internet Services are comprised of two service elements -- Internet Access (bandwidth) and Internet Transport (port).

#### Ethernet Internet Services

Ethernet 10 Mbps - 2 Mbps to 10 Mbps in 2 Mbps increments

Ethernet 100 Mbps - 2 Mbps to 10 Mbps in 2 Mbps increments, 10 Mbps to 100 Mbps in 5 Mbps increments

Ethernet 1Gbps - 50 Mbps to 100 Mbps in 10 Mbps increments, 100 Mbps to 250 Mbps in 25 Mbps increments, 250 Mbps to 1 Gbps in 50 Mbps increments

Ethernet 10Gbps - 1 Gbps to 10 Gbps in 500 Mbps increments

#### Traditional Internet Services

T1 - 1.5 Mbps

JxT1 - multiple bonded T1s - 3 Mbps to 12 Mbps, in 1.5 Mbps increments

DS3 - 2 Mbps to 10 Mbps in 2 Mbps increments, 10 Mbps to 45 Mbps in 5 Mbps increments

OC3 - 35 Mbps to 95 Mbps in 10 Mbps increments, 100 Mbps to 150 Mbps in 25 Mbps increments, plus 155 Mbps

OC12 - 125 Mbps to 250 Mbps in 25 Mbps increments, 250 Mbps to 600 Mbps in 50 Mbps increments, plus 622 Mbps

OC48 - 1 Gbps, 1.5 Gbps, 2 Gbps, 2.488 Gbps

Note: Not all services available in all markets. Burstable service is available in most markets. Burstable bandwidth minimums may vary.

#### Available Features:

- Primary DNS (for up to 10 domains)
- Secondary DNS available at no charge (up to 50 domains)
- IP address space with proper justification
- 24x7 trouble shooting (excludes Customer's equipment)
- Online bandwidth utilization reports
- Backup mail-exchange (MX service)
- BGP peering

#### Available Services at an additional charge:

- Managed Router Service
- Managed Firewall
- DDoS
- Shared Web/E-mail Hosting

## **Additional Terms and Conditions**

Usage. Customer will not originate the transmission of or store material in violation of any Federal or state laws or regulations, including, but not limited to, obscenity, indecency, defamation or infringement of trademark or copyright. Customer must comply with TWTC's IP policy at <http://www.twtelecom.com/support-information/customer-resources/product-resources/ip-addressing-policy/> and Acceptable Use Policy at <http://www.twtelecom.com/support-information/legal-information/acceptable-use-policy/>; either may be reasonably modified from time to time.

## **II. Service Level Agreement**

### **Network Availability**

TWTC's Internet Services will be available to Customer at least 99.99% of the time in a calendar month ("Network Availability"). Network unavailability occurs during a Service Outage. Upon Customer's request, TWTC shall issue credits for each Service Outage, calculated by multiplying the percentage specified in the table below by the MRC for the non-performing Service.

<b>Duration of Service Outage</b>	<b>Percentage Credit</b>
Less than 5 minutes (99.99% availability)	No Credit
5 minutes up to 4 hours	5% of the MRC
4 hours up to 8 hours	10% of the MRC
8 hours up to 12 hours	15% of the MRC
12 hours up to 16 hours	20% of the MRC
16 hours up to 24 hours	35% of the MRC
24 hours or greater	50% of the MRC

### **Network Latency**

TWTC measures network latency with respect to average round-trip transmission on its Network each month. Network latency calculations for Internet Services provided in the continental United States are made between designated points of presence ("POPs") within the continental United States and, for Hawaii, are made between its POPs in Hawaii and its POPs on the west coast of the continental United States (collectively "Network Latency"). Upon Customer's request, TWTC shall issue credits for TWTC's failure to meet the Network Latency metrics specified below, and such credits will be calculated by multiplying the percentage specified in the table below multiplied by the MRC for the non-performing Service.

<b>Network Latency Metrics (continental United States)</b>	<b>Network Latency Metrics (Hawaii to continental United States - west coast)</b>	<b>Percentage Credits</b>
0.00 to 45.00 ms	0.00 to 75.00 ms	No Credit
45.01 to 55.00 ms	75.01 to 85.00 ms	5% of the MRC
55.01 to 60.00 ms	85.01 to 90.00 ms	10% of the MRC
60.01 to 65.00 ms	90.01 to 95.00 ms	15% of the MRC
65.01 to 70.00 ms	95.01 to 100.00 ms	20% of the MRC
70.01 to 75.00 ms	100.01 to 105.00 ms	35% of the MRC
75.01 ms or greater	105.01 ms or greater	50% of the MRC

### **Packet Delivery**

TWTC measures packet delivery on its Network on a monthly basis. Packet Delivery is determined by averaging sample measurements taken each calendar month between TWTC's designated POPs. Upon Customer's request, TWTC will issue credits for TWTC's failure to meet the Packet Delivery metrics specified in the table below, and such credits will be calculated by multiplying the percentage specified in the table by the MRC for the non-performing Service.

<b>Packet Delivery Metrics (continental United States)</b>	<b>Percentage Credits</b>
99.9% or greater	No Credit
99.5% to 99.8%	5% of the MRC
99% to 99.4%	10% of the MRC
98% to 98.9%	15% of the MRC
97% to 97.9%	20% of the MRC
96% to 96.9%	35% of the MRC
Less than 96%	50% of the MRC

Performance metrics are available at TWTC's online customer portal at <https://customerportal.twtelecom.com/> or upon Customer's request.

# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### Attachment 3 – MyPortal

MyPortal is **tw telecom**'s online self-service tool where customers can easily manage their accounts around-the-clock. MyPortal is confidential and secure. Customers can easily and efficiently perform self-service transactions without having to place a call. Current portal functionality includes:

#### MyHome

MyHome provides a one screen overview that includes total invoice due amount, status information for in-progress orders, and trouble ticket status. MyHome includes the main page view which can be customized to include all of the information that is important to the individual customer. The customize link provides options to change the information seen on the main MyHome view.

Customers have the ability to add additional accounts or change their account information. Setting up customized view options allows customers with certain roles (e.g. billing) to only view the information that is most pertinent to them.

#### MyHome Page

tw telecom

My Home My Services My Ticket Notifications My Orders My Billing My Change Requests Welcome Demo

**Customer Overview**

A tw telecom Valued Customer.

+ tw telecom Demo and Testing

**MyTickets**

Tickets:

+ Open (25)

Go to MyTickets >>

Create New Ticket >>

How to Escalate >>

**MyOrders**

There are currently no orders in your queue.

Go to MyOrders >>

**MyNotifications**

Notifications:

There are currently no notifications in your queue.

See all Notifications >>

Scheduled Maintenance:

+ Open (2)

Alert Us of Your Maintenance >>

**MyServices**

Go to MyServices >>

**MyBilling**

MyInvoices:

Current Invoice Due	\$0.00
Past Due Balance 30 Days	\$0.00
Past Due Balance 60 Days	\$0.00
Past Due Balance 90 Days	\$0.00
Past Due Balance 120 Days	\$0.00

MyDisputes:

There are currently no in progress disputes in queue.

Make a Payment >>

Go to MyBilling >>

Go to MyDisputes >>

Create New Dispute >>

**MyChangeRequests**



# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### MyServices

MyServices provides performance monitoring of data utilization for **tw telecom**'s Internet, IP VPN, NLAN, and E-Line services, as well as voice utilization for trunk services.

Navigation tabs: Data Utilization, Voice Utilization, Dynamic Capacity, Thresholds & Alerts, Site Performance, POP Performance, tw telecom Network

Filters: AL-US, 1920 OXMOOR RD BIRMINGHAM AL US, Converged 22121084

Export to Excel

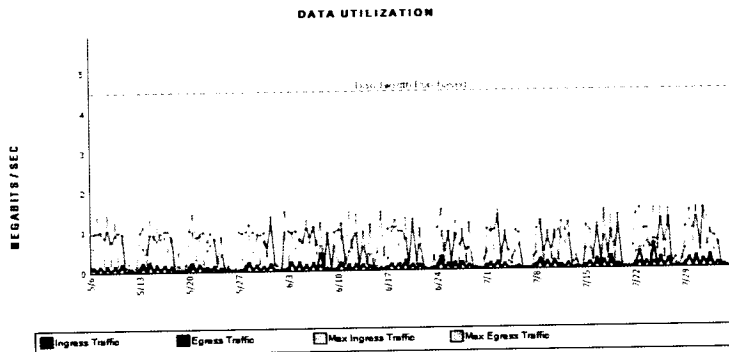
### Data Utilization

Customers can view and download their hour-to-hour bandwidth utilization against what they purchased for each service and its location within the **tw telecom** network. The utilization and trending information helps customers better manage their network and business.

AL-US, 1920 OXMOOR RD BIRMINGHAM AL US, Converged 22121084

Duration: 3 Month, End Date: 08/05/2013, Utilization Type: Aggregate, Chart Scale: Purchased Bandwidth, UPDATE

PRODUCT INFORMATION		SECURE INTERNET ACCESS		VOICE		LINKS	
Port	COV/DEM/STATE	Bandwidth	NA	Analog Lines	1	CoS Mapping	
Type	ETHER	MSS Product	None	PRI Trunks	0	Contacts	
Port Speed	10M	MSS Type	None	CAS Trunks	17	Sample Configuration	
Turn Up	11/3/2010 8:43:34 AM	IPVPN		Total Voice Lines	5	MyServices Help	
Status	AC	Network	COV/DEM/AL				
		Bandwidth	4 DM				
		Service Package	PREMIUM				
		Real-Time Bandwidth	2M				
		Interactive Bandwidth	0M				

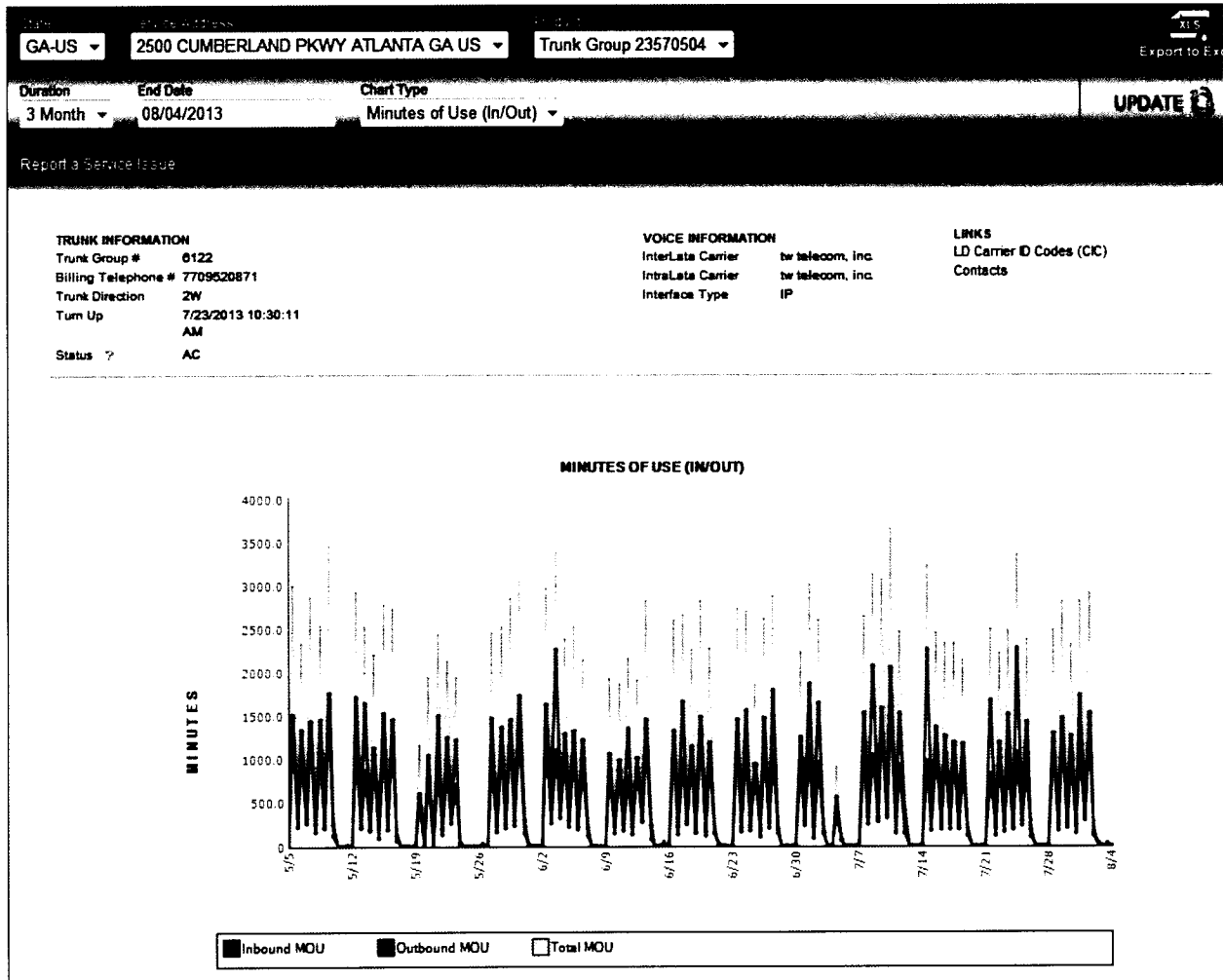


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**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Attachment 3 – MyPortal*

**Voice Utilization**

Customers can view and download their minutes of usage by trunk group. The utilization and trending information helps customers better manage their voice needs.



**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

Attachment 3 – MyPortal

**Thresholds & Alerts**

Enhanced Management provides proactive notifications based upon pre-established thresholds set for network Utilization, Latency, Jitter and Packet Delivery for E-Line services. When Dynamic Capacity is combined with Enhanced Management, customers can have their bandwidth automatically adjusted in real-time based on Enhanced Management performance thresholds.

Data Utilization    Voice Utilization    Thresholds & Alerts    Site Performance    POP Performance    tw telecom Network

Network: **IPVPN Tystad's IP VPN Service**             **UPDATE**

Create New    Edit

**Current Thresholds**       **Snapshot Taken: 8/14/2013 8:46:53 AM**    [Expand All](#)    Number of locations to display per page: 10

Service Address	State	POP	Circuit ID	
▶ 101 N WACKER, CHICAGO	IL	Chicago	IPVPN/DEMO/CHICAGO	
▼ 1150 REGAL ROW, DALLAS	TX	Dallas	IPVPN/DEMO/DALLAS	<a href="#">Delete Selected</a>

CoS	Metric	Threshold	Type	Alert Time	Time Zone	Send Notification To	Created By	
BE	Packet Delivery	95.00%	Watch				emdemo@twtelecom.com	<a href="#">Edit</a>
BE	Packet Delivery	99.95%	Warning				emdemo@twtelecom.com	<a href="#">Edit</a>
IA	Packet Delivery	99.90%	Watch	Peak	MT	emdemo@twteleco...	emdemo@twtelecom.com	<a href="#">Edit</a>
IA	Packet Delivery	95.00%	Watch				emdemo@twtelecom.com	<a href="#">Edit</a>
--	Utilization	50.00%	Watch				emdemo@twtelecom.com	<a href="#">Edit</a>
BE	Latency	5.00 ms	Watch				emdemo@twtelecom.com	<a href="#">Edit</a>
BE	Jitter	5.00 ms	Watch				emdemo@twtelecom.com	<a href="#">Edit</a>
RT	Packet Delivery	98.00%	Watch	All	ET	dj@twtelecom.co...	emdemo@twtelecom.com	<a href="#">Edit</a>

▶ 5911 BRECKENRIDGE PKWY, TAMPA    FL    Tampa    IPVPN/DEMO/TAMPA

Page 1 of 1

# LFUCG Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

## Dynamic Capacity

Dynamic Capacity allows a customer to easily increase E-Line bandwidth up to 300% in real-time—no down time, no paperwork, no waiting for a technician. Simply access **tw telecom**'s customer portal to use the intuitive interface to immediately increase network capacity as needed, or schedule a future or recurring event. When Dynamic Capacity is combined with Enhanced Management, customers can have their E-Line bandwidth automatically adjusted in real-time based on performance thresholds. Customers only pay for the extra bandwidth used for the specific number of hours used. Dynamic Capacity gives the customer's network the real-time flexibility needed to keep applications running smoothly.

Dynamic Capacity

**Activate Now**

Change my bandwidth for:  
1150 REGAL ROW-DALLAS,TX - 14200 E JEWELL AVE-AURORA,CO VLXXV109482/DEMO

Use the slider below to choose your desired bandwidth and select "Proceed with Activation".  
If you would like to create a scheduled or recurring event, select the "Schedule Event" tab on the left.

**Schedule Event**

You currently do not have DC Enabled

Subscribed 50.0Mbps

My Maximum Bandwidth 150.0Mbps

\* Required fields are marked with an asterisk

Schedule Title: Activate Now 08/14/2013 Send additional notification to: demo@twtelecom.com \*Duration: 4 Hrs: ?

The cost for 100.0Mbps Dynamic Capacity is \$8.25 per hour.

Proceed with Activation

Any changes to your bandwidth will be charged in 1 hour increments, with a minimum charge of 1 hour. The Dynamic Capacity bandwidth increases displayed above are in addition to your purchased bandwidth.

# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### Site Performance

From CIOs to Network Administrators, businesses require access to key data metrics to manage the health and performance of their networks. **tw telecom** is raising the intelligence of networks with features like Enhanced Management for **tw telecom** managed services and Ethernet solutions. Enhanced Management provides businesses with greater visibility into their network performance by delivering real-time, end-to-end performance metrics including latency/ frame delay, jitter/ frame delay variation and packet delivery/ frame delivery. Easy-to-use reports provide information that improves your ability to troubleshoot, plan, and fine tune your network for peak application performance.

Navigation tabs: Data Utilization, Voice Utilization, Capacity & Alerts, Thresholds & Alerts, Site Performance, POP Performance, tw telecom Network

Buttons: RESET, UPDATE

#### Dynamic Capacity Current Report

Reflects report data as of 8/14/2013 8:49:00 AM

Number of DCs to display per page: 10

Address	EVC	Is DC Scheduled?	DC Status
1150 REGAL ROW-DALLAS, TX - 14200 E JEWELL AVE-AURORA CO	VLXX/109482/DEMO	Yes	Not Active
180 PEACHTREE HWY ST-ATLANTA, GA - 7 MASON IRVINE CA	VLXX/140152/DEMO	Yes	Not Active
485 N KELLER RD-MAITLAND FL - 520 SW 5TH AVE-PORTLAND OR	VLXX/140082/DEMO	No	Not Active
495 GALLIMORE DAIRY RD-GREENSBORO NC - 5480 FELTL RD-MINNETONKA MN	VLXX/140142/DEMO	No	Not Active
520 SW 5TH AVE-PORTLAND OR - 7050 EMPIRE CENTRAL DR-HOUSTON TX	VLXX/140103/DEMO	No	Not Active
520 SW 5TH AVE-PORTLAND OR - 9357 ALLEN RD-WEST CHESTER OH	VLXX/140102/DEMO	Yes	Not Active

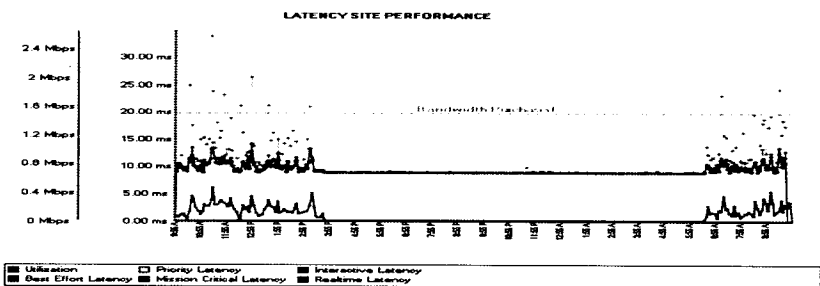
Page 1 of 1

IPVPN Tystad's IP VPN Service | FL-US | 5911 BRECKENRIDGE PKWY, TAMPA

Duration: 1 Day | End Date: 08/14/2013 | Chart Type: Latency | Chart Scale: Purchased Bandwidth

Buttons: View Charts, UPDATE

INFORMATION	SITE PRODUCTS	LINKS
Port: IPVPN/DEMO/TAMPA Type: T1 Port Speed: 1.5M Bandwidth: 1.5M Turn Up: 1/12/2010 9:48:08 AM State: AC	Converged Service Bundle - IP VPN Only	CoS Mapping Contacts Sample Configuration MyServices Help

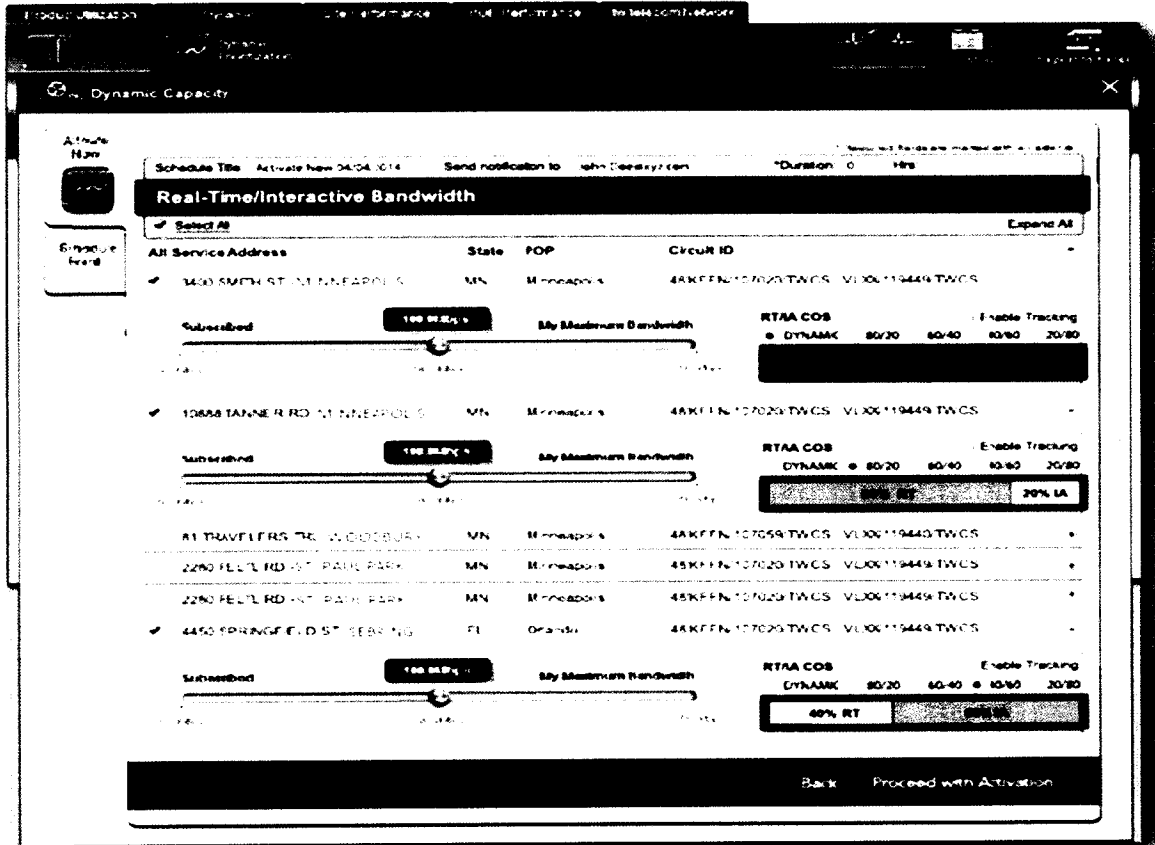


**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Attachment 3 – MyPortal*

**Dynamic Prioritization**

Dynamic Prioritization allows allocating your IP VPN bandwidth to priority (Real Time (RT) and Interactive (IA)) CoS traffic in real-time to meet the fluctuating demands of your critical business applications:



**Features:**

- Dynamically Change RT/IA CoS for Sites with 15 Mbps or higher
- Changes can be made per segment (CPE-to-POP)
- Leverage “activate now” or scheduled an event
- Set RT and IA allocation
  - Percentages
  - Dynamic - Leverage RT/IA up to CoS Max
- Set RT/IA on one or multiple sites at once

# LFUCG

## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### POP Performance

Performance metrics for Latency, Jitter and Packet Delivery between **tw telecom's** POPs that customer's data services touch are available in a report and chart format. Metrics are derived from continuous active tests between **tw telecom's** POPs every five seconds for each network traffic class.

Snapshot Taken: 8/5/2013 4:16:39 PM

You are viewing results for July, 2013

POP Sent To	Latency(ms)	Jitter(ms)	Packet Delivery(%)
Birmingham	3.47 ms	0.10 ms	99.99 %
Chicago	22.88 ms	0.18 ms	99.99 %
Cincinnati	21.83 ms	0.16 ms	99.98 %
Colorado Springs	41.33 ms	0.24 ms	99.99 %
Dallas	25.06 ms	0.16 ms	99.99 %
Denver	39.49 ms	0.13 ms	99.99 %
Greensboro	8.13 ms	0.17 ms	99.99 %
Houston	20.03 ms	0.22 ms	100.00 %
Memphis	11.37 ms	0.16 ms	99.99 %
Minneapolis	32.22 ms	0.22 ms	99.99 %

Report Information  
Performance metrics are derived from continuous active tests between tw telecom's POPs every five seconds for each network traffic class. The results of these tests are averaged every 60 seconds.

POP performance data is also available to view in a chart format.

LATENCY POP TO POP PERFORMANCE

Chart Information  
Performance metrics are derived from continuous active tests between tw telecom's POPs every five seconds for each network traffic class. The results of these tests are averaged every 60 seconds.

# LFUGG

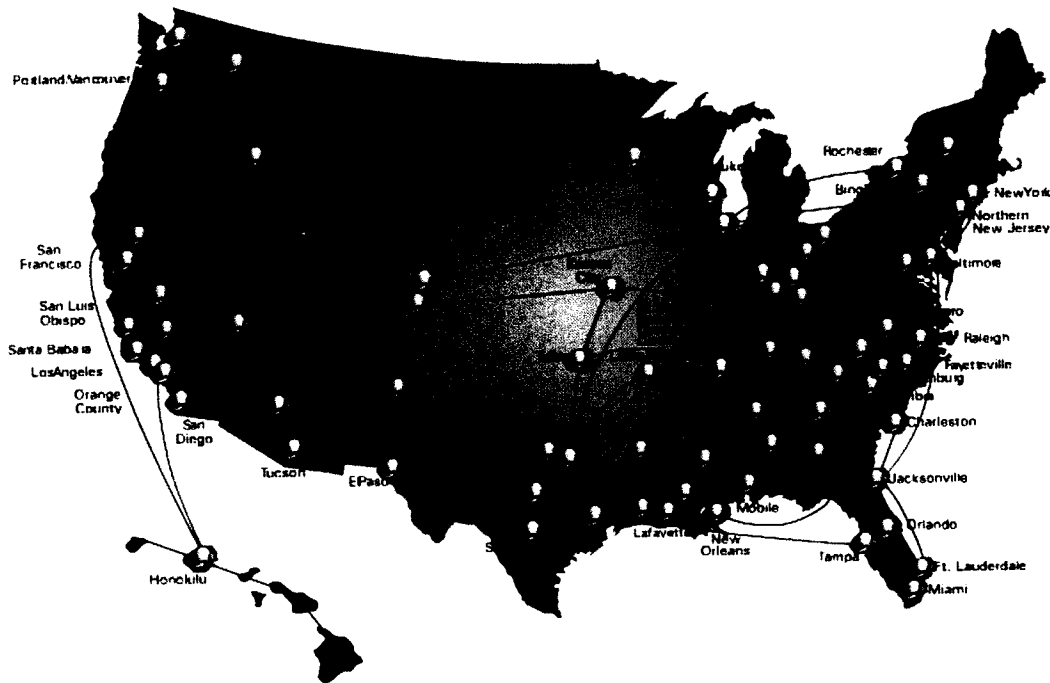
## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### tw telecom Network Performance

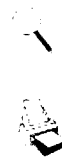
These statistics represent monthly averages for the entire **tw telecom** backbone network and are not customer specific. Averages presented for Packet Delivery, Latency and Jitter are intended to reflect the overall performance of the network for a one-month period.

#### tw telecom IP Network Performance



#### Monthly IP Network Performance Averages

Month	Packet Delivery%	Latency (ms)	Jitter (ms)
July	100	36	0
June	100	36	0
May	100	36	0



- National IP Network
- Regional Interconnection Sites
- Performance metrics available
- ★ National Operations Center

[Click here for historical data](#)

[Click here for Honolulu metrics](#)

[Click here for Methodology](#)





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## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### MyOrders

MyOrders gives customers the ability to view the status of in-progress and closed orders going back 12 months. Order tracking and detail allows customers to view their order during the installation process.

Snapshot Taken: 8/5/2013 4:25:42 PM

Number of order to display per page: 10

Order No.	Status	Order PON	Start Date	Completed On	Account No.
338028-405009	Closed		6/7/2013	—	304254
338028-405085	Closed		6/7/2013	—	304254
338028-404971	Closed		6/7/2013	5/30/2013	304254
338028-404991	Closed		6/7/2013	5/30/2013	304254
338028-404964	Closed		6/7/2013	5/30/2013	304254
338028-259469	Closed		6/7/2013	5/30/2013	304254
839623	Closed	CI000896060	5/26/2013	5/16/2013	304254
838952	Closed	CI000895174	5/24/2013	5/14/2013	304254
838638	Closed	CI000894110	5/23/2013	5/13/2013	304254
832209	Closed		4/18/2013	4/17/2013	304254

Page 1 of 2

Customers can also download Firm Order Confirmations (FOCs) and Design Layout Record (DLR) reports related to their service order.

301314-404964

### Order Details Summary

**Order Information**  
Order Number: 301314-404964  
Order PON:  
Order Status: Closed  
Account Manager Name: Stacey Sand  
Account Manager Phone: (805) 597-6452

**Order Details**

Service Location: 496 GALLIMORE DAIRY RD , GREENSBORO, NC, 27409

Product Name: **Dynamic Capacity**  
Circuit ID: VLXX/140142/DEMO  
Activity: Add  
Product Status: Active  
Due Date: 2/28/2013  
Effective Bill Date: 2/28/2013

Product Name: **E-Line - EVC**  
Circuit ID: VLXX/140142/DEMO  
Activity: Add  
Product Status: Active  
Due Date: 2/28/2013  
Effective Bill Date: 2/28/2013

FOC: Firm Order Confirmation (FOC) Report

DLR: Design Layout Record Report

DLR: Design Layout Record Report

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## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### MyTickets and MyNotifications

**MyTickets** gives customers the ability to create new trouble tickets on-line and have real-time access to ticket detail and status. Customers can also view the status of open and closed tickets going back 12 months and can easily create a trouble ticket on-line without having to place a call.

MyTickets MyNotifications MyScheduled Maintenance MyCases

Ticket No. Account No. -- All -- Status -- All -- Advanced Search RESET UPDATE

How to Escalate Create New Ticket

Snapshot Taken: 8/5/2013 4:32:47 PM Number of tickets to display per page: 10

Ticket No.	Status	Service Address	Service Identifier	Description	Created On	Closed On	Account No.
CI000946195	Open	ADDRESS OF OFFNET CLLI LSO CITY LITTLETON, CO	EVC/DEMO/CO	Circuit Not Visible	7/31/2013	--	304254
CI000944947	Closed	1920 OXMOOR RD BIRMINGHAM, AL	05/KDFN/101925/TWCS	Circuit/Trunk Down	7/29/2013	7/29/2013	304254
CI000944781	Closed	5450 WINCHESTER RD MEMPHIS, TN	ENLANBW/DEMO/MEMPHIS	Intermittent	7/29/2013	7/29/2013	304254
CI000944193	Open	5911 BRECKENRIDGE PKWY TAMPA, FL	IPVPN/DEMO/TAMPA	Bandwidth/Latency	7/27/2013	--	304254
CI000941503	Closed	400 ELMWOOD AVE ROCHESTER, NY	18336363	Tag and Locate	7/23/2013	7/24/2013	304254
CI000941492	Closed	1150 REGAL ROW DALLAS, TX	22025622	DDoS Attack	7/23/2013	7/23/2013	304254

**MyNotifications** gives customers the ability to view, respond to and download proactive alerts generated by **tw telecom's** networking monitoring tools.

CI000952582

Details

Notification ID: **CI000952582** Created On: **8/10/2013 9:43:50 PM** Action: **Open a service ticket**

Description: **Configuration**

Service Address: **VLXX140102/DEMO**

Service Identifier: **VLXX140102/DEMO**

Account Number: **304254**

Status: **Pending**

\*Required Field

-- Select --

-- Select --

Open a service ticket

Close notification/Non-issue

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**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Attachment 3 – MyPortal*

**MyScheduled Maintenance** gives customers visibility into any **tw telecom** maintenance notifications. Customers can check the time, duration and status of effected circuits, as well as alert **tw telecom** of any maintenance activities the customer has scheduled.

Notification Details SM000037927

Details		
Maintenance ID	City	Description
SM000037927	Multiple Markets	Hardware - Hardware upgrade
Start Date/Time	Stop Date/Time	Estimated Downtime
11/16/2011 10:00 PM	11/17/2011 3:00 AM	1 to10 minutes

Circuits  
Please note that not all listed circuits may be down during an outage, to verify if a circuit is affected by the outage please check the Service Impact column.

Service Impact	Circuit ID
Down	24/HCF5/103141/TWCS

**MyCases** - Now that **tw telecom** offers Advanced Technical Support to customers, MyPortal provides visibility into the customer case opened by the Customer Consultation team for that support. These cases track a customer's pre-authorized billable support hours and the number of hours billed to date for that support. Customers have access to all of this information and much more in MyPortal.

CC00000025

Case Details			
Case No.: CC00000025	Created Date: 07/24/2013	Case Description: CONFIGURATION SUPPORT	
Status: Active	Account No.: 304254		

Number of billed hours to display per page: 10

Date of Charge	Service Address	Service Identifier	Billing Description	Hours
07/24/2013	101 N WACKER , CHICAGO, IL	IPVND/DEMO/CHICAGO	Config Management	3

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**Access Provider for Redundancy**

*Attachment 3 – MyPortal*

**MyBilling**

MyBilling gives customers access to their **tw telecom** invoices on-line. It also allows customers to download their billing data through our secure MyBilling website. When customers sign up for MyBilling, they can also use **tw telecom**'s electronic invoice payment service, ePay, which provides the added convenience of easily and securely paying bills on-line.

tw telecom

Home MyServices MyFees MyOrders MyUsage MyCharges MyClear Billing Welcome Demo

Account Number: 304254

### 12 Month Historical Trending

Charges Taxes Payments

### Current Billing Snapshot

**MONTHLY BILLING INFORMATION**

Last Invoiced Amount:	\$939.62	Current Charges:	\$60.53
Payments Received:	\$0.00	Current Taxes:	\$108.55
Outstanding Balance:	\$949.20	<b>Balance Due:</b>	<b>\$0.00</b>

\* Reflects payments and adjustments as of 11/8/2011 12:01 a.m. MT.

**ACCOUNT INFORMATION**

Past Due 30 Days:	\$0.00	Past Due 90 Days:	\$0.00
Past Due 60 Days:	\$0.00	Past Due 120 Days:	\$0.00

**PayNow**

### Help Center

- [Pay My Bill Online](#)
- [View Billing Reports](#)
- [Frequently Asked Questions](#)
- [Payment Options](#)
- [MyBilling User Guide](#)
- Email Reminder:  YES  Edit
- Bill delivery method:  Green  Edit

**Go Green**  
Go Paperless here

### Download Center

To download a file, simply click the arrow next to one of the file types below and select the desired month you wish to download.

File Type
▶ Invoices (PDF)
▶ Conference
▶ Circuit
▶ Invoice
▶ Usage

\* Please note, invoices are in PDF format and will require Adobe Acrobat Reader to view.

### 12 Month Summary

Summary Type:

Your Invoice and Payment summary information is now available in two different ways! Simply select the desired 'Summary Type' using the dropdown list in the upper right corner to change the information being displayed. You can download your monthly invoices here as well, simply click on the Invoice Number to begin your download. \* Please note Adobe Acrobat Reader is required to view your invoice.

Billing Date	Invoice Number	Current Charges	Current Taxes	Amount Due Last Bill	Total Current Balance
▶ 1/20/2011	4009521	\$50.95	\$108.55	\$949.20	\$1,108.70
▶ 12/20/2010	3947720	\$50.95	\$108.55	\$780.12	\$939.62
▶ 11/20/2010	3890281	\$50.95	\$118.72	\$602.83	\$772.50

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**Access Provider for Redundancy**

*Attachment 3 – MyPortal*

From the MyBilling tab, customers can select "PayNow" and be taken to the E-Payment Center.

**E Payment Center**

Welcome to E-Pay! The information you enter here will transfer over to our Invoice Payment site. You are not making a payment when you submit this information here, however, you may edit the information once you enter the payment site. Please note, only 15 accounts may be paid on the payment site. Also, **your browser must have JavaScript enabled to use this feature!**

**Please Click "Submit Selected Accounts for Payment" when you are ready to access the payment site.**

Account Number	Invoice Date	Due Date	Current Balance Due	Payment Amount	Recurring Payment
304254	TBD	TBD	TBD	2,351.28	Setup 

tw telecom will apply late payment charges pursuant to contract or tariff. To avoid these charges, please pay your invoice at least two business days prior to your due date. To insure that eCheck and Credit Card payments that you have selected to settle "same day" are posted to your tw telecom account and reflected on your next bill, your JP Morgan Chase confirmation must occur prior to 4:00 pm Mountain Time at least two business days prior to your bill date.

Note: Payments take 2 days to post to tw telecom, please ensure that you select a payment date that falls 2 business days before your due date (holidays not included). By allowing your payment adequate time to post, you will ensure that late payment charges will not be added to your account.

Please call Customer Care toll-free at (800) 829-0420 , Option 3, Monday – Friday, 7 am to 7 pm CT with any questions.

If you meet the requirements for credit or refund in accordance with the terms of your contract, please email [Payment.Application@twtelecom.com](mailto:Payment.Application@twtelecom.com) and include your account number, name, payment detail and reason for request.

**If you would like to explore other payment options, please click here.**

**[Submit Selected Accounts For Payment](#)**

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## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

From the Download Center, customers can select "View Billing Reports":

MyBilling Reports

Reports: Invoice Summary Accounts: 304254

Billing Date: aug-2010 View Report

1 of 27 100% Find | Next

**tw telecom** **BILL SUMMARY**  
DETAIL BY SECTION

MYBUSINESS  
ATTN: CRAIG TYSTAD  
5700 S QUEBEC ST  
GREENWOOD VILLAGE, CO 80111

Bill Date: 8/20/2010  
Telephone Number: --

Account Number: 304254	Charge From-To Dates	Quantity		
<b>C: Basic Service</b>				
RECURRING CHARGES				
Conference	8/20/2010-9/19/2010	2	0.00	
Total for RECURRING CHARGES			\$0.00	
TOTALS FOR Basic Service				\$0.00
<b>D: Call Management</b>				
RECURRING CHARGES				
Toll Free Disaster Reroute	8/20/2010-9/19/2010	1	0.00	
Total for RECURRING CHARGES			\$0.00	
TOTALS FOR Call Management				\$0.00
<b>E: Internet and Data</b>				
RECURRING CHARGES				
Fixed An. Internet 10Mbps	8/20/2010-9/19/2010	2	0.00	

## MyDisputes

MyDisputes allows customers to submit and review any disputed charges on-line and review complete details on the specific charges, date ranges and amounts being disputed.

tw telecom

MyHome MyService MyTricks MyOrder MyBilling MyChangeRequests Welcome Demo

Dispute ID BAN Status In Progress Advanced Search RESET UPDATE

Create New Dispute

Number of disputes to display per page 20

Dispute ID	Status	Entered On	Closed On	Account No.	BAN
350926	In Progress	11/8/2011	--	304254	

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## Invitation to Bid # 138-2014 Internet Access Provider for Redundancy

Attachment 3 – MyPortal

### MyChange Requests

MyChange Requests lets customers view, track and submit change requests for services. Customers can submit requests to:

Internet and IP VPN, and Voice Services

- Request IP address(es)
- Add/modify BGP and Static routing instructions
- Establish or modify DNS records
- Establish or modify IP VPN users related to Firewall Remote Access

Voice Services


- Add, change and delete LD account codes

Submit a Service Change Request

**Select Type**

**Select Service**      **SELECT CHANGE REQUEST TYPE**

**Details**      Select the tab for the service you want to change. Then choose your change request type below to continue.

**Contact**      If you do not see the change request type you require, please contact Customer Care at (800) 829-0420 .

**Review**

**Confirmation**

**Internet & IPVPN Services**

**Internet**

- IP Address - Add/remove IPs on my current service
- IP Address - Request more than 1 IP on new service
- BGP Peering - Modify existing service
- BGP Peering - Establish on existing service
- BGP Peering - Establish on new service
- Static Route - Establish or modify
- DNS - Establish or modify
- Firewall Remote Access - Establish or modify VPN users

**IPVPN**

- BGP Peering - Modify existing service
- BGP Peering - Establish on existing service
- Static Route - Establish or modify

## **Attachment 4 – Standard Terms and Conditions**



2013 tw telecom  
Standard Terms and C



September 4, 2014

Mr. Mike Nugent  
Lexington-Fayette Urban County Government  
Division of Central Purchasing  
200 East Main Street, Room 338  
Lexington, KY 40507

RE: Lexington-Fayette Urban County Government - Invitation to Bid # 138-2014 Internet Access  
Provider for Redundancy

Dear Mr. Nugent,

More than ever, business success depends on the reliability and scalability of an organization's communications network. In responding to the Lexington-Fayette Urban County Government's (LFUCG's) ITB, **tw telecom** holdings inc. (**tw telecom**) will fully answer your questions and we will describe how our solutions address your business needs and goals.

**tw telecom** is proposing our Burstable Internet Access service to meet the requirements outlined in the ITB. As an alternative solution, we are proposing our Ethernet Internet Service (EIS) with Dynamic Capacity. The benefits of our Internet solutions are detailed in our proposal.

We appreciate this opportunity and look forward to helping LFUCG achieve its business goals. We want to earn your trust for many years to come. We will contact you within the next week to answer any questions you might have and discuss the next steps in moving forward.

Sincerely,

Brian Fox  
Senior Account Executive  
(859) 550-2206  
[brian.fox@twtelecom.com](mailto:brian.fox@twtelecom.com)

Roman Lind  
Senior Account Executive  
(502) 489-2756  
[roman.lind@twtelecom.com](mailto:roman.lind@twtelecom.com)

**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Confidentiality Statement*

## **Confidentiality Statement**

The information contained in this proposal is proprietary and confidential and is being provided to Lexington-Fayette Urban County Government on a strictly confidential and limited use basis. Title to all copyright, trademark, trade secret, intellectual property and other ownership rights in the subject matter of this proposal shall be and remain exclusively with **tw telecom holdings inc. (tw telecom)** or its affiliates, even with respect to items that were created by **tw telecom** specifically in connection with the proposal. No title, copyright, trademark, trade secret, intellectual property or other ownership rights to property held by **tw telecom** are transferred to LFUCG.

LFUCG shall keep the information in this proposal confidential and shall not duplicate, distribute or otherwise disseminate any such information except as required for purposes of evaluating this proposal. LFUCG shall cause its agents and employees, and any other parties or persons who may have access to the information herein, to observe and protect the confidentiality of such information and LFUCG shall safeguard the information herein with the same degree of care that LFUCG accords its own confidential information, but in no event less than a commercially reasonable degree of care. LFUCG shall be liable for any breach of confidentiality by any of its employees, agents or other persons who obtain access to or possession of any of **tw telecom**'s information from or through LFUCG.

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**LFUCG**  
**Invitation to Bid # 138-2014 Internet**  
**Access Provider for Redundancy**

*Response to ITB/Pricing*

**Response to ITB/Pricing**



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.pdf

## **Standard Terms and Conditions**

These Standard Terms and Conditions ("Agreement") are entered into by **tw telecom holdings inc.**, a Delaware corporation, on behalf of itself and its wholly owned and state certified operating subsidiaries, (collectively "TWTC") and \_\_\_\_\_, a \_\_\_\_\_ Corporation ("Customer") and are effective upon execution by both Parties. Customer and TWTC may be referred to individually as a "Party" or collectively as the "Parties". TWTC is responsible for the performance of its operating subsidiaries under this Agreement.

**1. Service Orders:** Customer may submit service orders to TWTC to purchase telecommunication and related services under this Agreement ("Service Orders"). The Service Orders describe the telecommunication and related services that are available for purchase ("Services"). Service Orders executed by the Parties together with this Agreement form the final written agreement between the Parties, and can only be amended or modified in a written document executed by both Parties. Services are subject to availability, and TWTC has the right not to accept a Service Order submitted by Customer. If a Service Order has been accepted by TWTC, it will provide Services for the term set forth in the Service Order and renewal periods ("Service Term"). Upon expiration of a Service Term for a particular Service, the Service Term will automatically renew for successive Month to Month terms unless terminated by either Party upon written notice provided in accordance with Section 20 below at least thirty days prior to expiration of the then existing Service Term.

**2. Term of Standard Terms and Conditions:** The term of these Standard Terms and Conditions will commence upon signature by both Parties and will continue to govern Service Orders entered into by the Parties unless and until the Agreement is terminated in accordance with Sections 12 or 13 herein, or is otherwise superseded by a subsequent written agreement between the Parties.

**3. Cancellation, Modification or Expedition of Orders:** "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the TWTC Website ([www.twtelecom.com](http://www.twtelecom.com)) and are subject to modification by TWTC effective upon posting to the TWTC Website.

a) **Cancellation.** Customer may cancel a Service Order if the request is received in writing by TWTC prior to the planned installation date, and TWTC shall have the right to assess a Cancellation Charge. If the request to cancel is received after installation has begun, Customer must pay full termination liability as set forth in Section 14 below.

(b) **Modification.** Customer may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If TWTC receives a written modification request for delay of installation less than 3 days prior to the planned installation date, Customer must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. TWTC reserves the right to limit the number of requests to delay the planned installation date.

(c) **Expedite.** Customer may request an expedited installation date. If TWTC accepts the expedited installation date, Customer must pay an Expedite Charge.

(d) **Third Party Charges.** In addition to the charges set forth in (a), (b) and (c) above, TWTC may bill Customer for third party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order.

## **4. TWTC Network, Access and Interconnection:**

(a) **Responsibilities.** TWTC will own and control the telecommunications equipment, cable and facilities installed and operated by TWTC for provision of the Services to Customer ("TWTC Network"). The TWTC Network will remain TWTC's personal property regardless of where located or attached. TWTC has the right to upgrade, replace or remove the TWTC Network in whole or in part, regardless of where located, so long as the Services continue to perform. TWTC has the right to limit the manner in which any portion of the TWTC Network is used to protect its technical integrity. Customer may not alter, move or disconnect any parts of the TWTC Network and is responsible for any damage to, or loss of, the TWTC Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. TWTC has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a

writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

(b) Access. Customer must provide TWTC with access to its premises to install and maintain Services and TWTC's Network. Customer must provide, at its expense, the following (collectively "Premise Requirements"): (i) appropriate space, power and environmental conditioning; and (ii) reasonable access rights and/or rights of way from third parties, as may be required for the installation and maintenance of the TWTC Network at and into Customer's premises. Customer must pay a Modification Charge if Customer does not provide the Premise Requirements prior to the scheduled installation date. In addition to the Modification Charge, TWTC may charge Customer for the reasonable time and materials incurred and documented by TWTC that are incurred because of Customer's failure to timely provide the Premise Requirements plus any third party charges assessed against TWTC. Customer must provide TWTC with a contact and/or help desk number that can be reached 24 hours per day/7 days per week.

(c) Demarcation Point and Inside Wiring. TWTC shall be responsible for provisioning Service up to the Demarcation Point and Customer is responsible for providing and maintaining any necessary wiring and facilities on Customer's side of the Demarcation Point. "Demarcation Point" means the TWTC-designated physical interface between TWTC's Network and Customer's equipment, which point shall be either (i) in the case of a Service terminating at a TWTC owned or controlled premises, TWTC's designated distribution panel or network interface device located within such TWTC premises or (ii) in the case of a Service terminating at Customer's premises, the distribution panel or network interface device located at the common telecommunications ("telco") demarcation at the Customer or end-user premises (e.g., entry point for telco facilities, telco closet or common telco room). If requested by Customer, TWTC may install, co-ordinate or otherwise arrange for installing or obtaining from third parties, facilities on Customer's side of the Demarcation Point ("Inside Wiring"). Customer agrees to pay Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com) for any Inside Wiring performed by TWTC personnel and agrees that TWTC may bill Customer for any third party charges it incurs to provide such Inside Wiring.

(d) Letter of Authorization / Carrier Facility Assignment. If Customer intends to connect the Services to facilities that either it nor TWTC owns, it must provide TWTC with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

## 5. Installation and Maintenance:

(a) Installation. TWTC will notify Customer when the Service has been successfully installed and is available for Customer's use ("Service Date"). Unless Customer notifies TWTC by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If Customer so notifies TWTC, the Service Date will not occur and the Service Term will not commence until the Service is operating properly. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.

### (b) Maintenance:

(i) Scheduled Maintenance. TWTC will monitor TWTC's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. TWTC will endeavor to provide Customer with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

(ii) Emergency Maintenance. If TWTC has to perform maintenance outside of the Scheduled Maintenance window set forth in Section 5(b)(i) above, then TWTC will provide as much prior notice to Customer as is practicable under the circumstances.

### 7. Charges, Billing, Taxes and Payment:

(a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.

(b) TWTC may require a deposit prior to the provision of any new Service. TWTC also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six month period.

(c) TWTC will invoice Customer for applicable Taxes (defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. Customer will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If Customer fails to pay any Taxes properly billed, then as between TWTC and Customer, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

“Tax” or “Taxes” mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed, or sought to be imposed, on or with respect to purchases by Customer from TWTC for consideration under this Agreement or for TWTC's use of public streets or rights of way, which TWTC is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" will not include any tax on TWTC's corporate existence, status, income, corporate property or payroll taxes.

If either Party is audited by a taxing or other governmental authority, the other Party agrees to cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. TWTC will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. The Customer will ensure that no lien is attached to or allowed to remain on any asset of TWTC as a result of any Tax contest. Customer will indemnify and hold TWTC harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide TWTC with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to TWTC until it provides TWTC with a valid tax exemption certificate. If applicable law exempts a Service under this Agreement from a Tax, but does not also provide an exemption procedure, then TWTC will not collect such Tax if Customer provides TWTC with a letter signed by one of its officers: (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold TWTC harmless from any tax, interest, penalties, loss, cost or expense asserted against TWTC as a result of its not collecting the Taxes from Customer.

(d) Payment for all undisputed amounts due under this Agreement must be received by TWTC on or before the due date specified on the bill (“Due Date”). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

**7. Disputes:** If Customer disputes any charges, it must log the dispute by completing and submitting a dispute form via TWTC's dispute website located at: <https://billing.twtelecom.com/disputes/>, or by contacting TWTC's dispute telephone line at 1-800-829-0420. All disputes must be submitted to TWTC in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of TWTC must be paid by Customer within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid.

### 8. Service Levels / Service Outage Credits:

(a) **Service Level Agreement (“SLA”).** The SLAs provided by TWTC are set forth at <http://www.twtelecom.com/SLAs>. The SLAs identify the applicable performance metrics and Service Outage credit tables. If a specific SLA is not identified on the website for a particular Service, then credits for Service Outages exceeding thirty (30) minutes will be calculated on a

pro rata basis, i.e. credits will be calculated by multiplying the duration of the Service Outage by the applicable MRC, divided by the monthly period.

(b) Service Outage Definition. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a service level agreement and such non-compliance is caused by TWTC's Network; or (b) a complete loss of transmission or reception capability for a Service caused by TWTC's Network.

(c) Reporting and Tracking of Service Outages. If there is a Service Outage, Customer must contact TWTC's Customer Network Reliability Center ("CNRC") at 800-829-0420 and TWTC will open a trouble ticket and provide Customer with a trouble ticket number for tracking purposes.

(d) Duration of Service Outage and Application of Credits. For the purpose of calculating applicable credits, a Service Outage begins when Customer reports the Service Outage to TWTC's CNRC, and ends when the Service is restored. Service Outages do not include outages and failures caused by the equipment, acts or omissions of Customer, third parties, Force Majeure events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage does not include any time during which TWTC is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by Customer, and such requests must be submitted to TWTC within 120 days from the date Service is restored.

(e) Chronic Trouble Services. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, Customer may terminate the applicable Service without early termination liability provided that Customer supplies TWTC with a written termination notice no later than thirty days following the third Service Outage.

(f) Remedies. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in Sections 8(a) and 8(e) of this Agreement constitute Customer's sole and exclusive remedy for Service Outages.

(g) Service Outages Not Caused by TWTC's Network. If TWTC responds to a service call initiated by Customer, and TWTC reasonably determines that the cause of the problem is: (i) not due to TWTC's Network; or (ii) on Customer's side of the Demarcation Point, Customer must compensate TWTC for the service call at TWTC's then prevailing Time and Materials rates posted at [www.twtelecom.com](http://www.twtelecom.com).

## 9. Governmental Regulation - Changes:

(a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.

(b) TWTC may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of TWTC providing the Service. Customer is not responsible for the termination liability set forth in Section 14 below if TWTC discontinues the Service under this subsection.

**10. Indemnification:** Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party ("Indemnitee") from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Indemnitor. Customer shall indemnify, defend and hold TWTC harmless from all losses or damages arising from Customer's violation of third party intellectual property rights, all claims of any kind by Customer's end users, or any act or omission of Customer associated with any Service.

**11. Limitation of Liability:** Except for the Parties' respective obligations set forth in Section 14 herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that



are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). TWTC's liability to Customer for direct damages may not exceed one month's calculation of the applicable MRCs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. TWTC has no liability for the content of information that Customer passes through TWTC's Network, Customer's transmission errors, or any failure to establish connections outside of the TWTC Network.

## 12. Termination by TWTC:

(a) Termination With Notice. TWTC may disconnect all Service(s) associated with a delinquent account upon ten (10) days written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; and/or (iii) any governmental prohibition or required alteration of the Services.

(b) Termination Without Notice. TWTC may terminate or suspend Services without notice if: (i) necessary to protect TWTC's Network; (ii) TWTC has reasonable evidence of Customer's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.

(c) Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. TWTC retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If TWTC terminates Service in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a reconnection charge and a deposit equal to 2 months' recurring charges. All requests for disconnection will be processed by TWTC in 30 days or less. Customer must pay for Services until such disconnection actually occurs.

**13. Termination by Customer:** Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for TWTC's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects Customer's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

**14. Termination Liability:** If TWTC terminates this Agreement or any Service Order(s) pursuant to Section 12 above (other than subsections a(iii) and/or b(iii)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than pursuant to Section 13 above, all MRCs associated with the terminated Service(s) for the balance of the applicable Service Term shall become immediately due and payable.

**15. Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) TWTC may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies TWTC's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

**16. Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

**17. Force Majeure:** Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

**18. Governing Law - Litigation:** The interpretation of the rights and duties of the Parties and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and subject to the laws of the State of \_\_\_\_\_ excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

**19. Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

**20. Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. TWTC must provide such notice to Customer's billing address, and Customer must provide such notice to TWTC at 10475 Park Meadows Drive, Littleton CO 80124, Attn: Deputy General Counsel, **except that if Customer is disconnecting Services for any reason, it must deliver notice to TWTC either by facsimile to 303-803-9638 or by email to "[CustomerCare@twtelecom.com](mailto:CustomerCare@twtelecom.com)"**. Notice by facsimile or email is deemed given when delivered.

**21. No Waiver:** Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

**22. Public Releases, Use of Name:** Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement nor the Services provided hereunder without the prior written consent of the other Party. Customer may not use TWTC's name, logo or service mark without TWTC's prior written consent. TWTC may use Customer's name and logo in materials presented to analysts and investors.

**23. Representations and Warranties:** Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. TWTC represents and warrants that the Services will be performed by qualified and trained personnel. TWTC does not guarantee, represent or warrant that the Service(s) will be without interruption. TWTC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

**24. Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

**25. Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**26. Relationship of Parties; No Third Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of TWTC, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.

**27. Confidentiality:** Each Party may disclose confidential information to the other Party in connection with this Agreement. Confidential information includes this Agreement, Service Orders, Service Level Agreements, all pricing

information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to consultants or subcontractors of the receiving Party who agree to be bound by this Section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement.

**Signature Block**

<b>tw telecom holdings inc.</b>	<b>Customer:</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Sales Person:	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.